THE CONGRESSIONAL CONFERENCE COMMITTEE

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To

MY MOTHER

PREFACE

In the present volume the writer attempts to analyze and to trace the origin and evolution of a piece of legislative machinery which, in comparison with its importance, has received little attention from students of Government. The Journals and reports of debates, alike of the early English Parliament and of the United States Congress, abound in cases of the use of the conference committee, but no detailed and connected study has hitherto been made of its development. The Congressional conference committee system forms an indispensable part of modern Congressional procedure. Yet, with all the weight of age and present-day importance that pertains to it, the conference committee is still almost unknown.

Some scattered facts on the workings of the bicameral system appear in the interstices of this procedural history. No connected attempt has been made, however, to discuss the relative importance of the House and the Senate as legislative chambers. This would require a separate monograph. The conference committee is the agency through which one house of the national Congress must act in order to assert its dominance over the other house in respect of a certain bill. Which house wins more frequently on the important measures could be ascertained by examining the legislative history of the measures reaching the statute book. Where the balance of power lies in a bicameral system depends upon many other factors which are unconnected with procedural

regulations. It is the conference committee as a piece of legislative machinery that this monograph discusses.

The subject for this book was suggested by Professor Lindsay Rogers of Columbia University, and to him the author is much indebted for his generous help and criticism.

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CHAPTER I

INTRODUCTORY

THE conference committee and the rules and customs that have grown up around it form a vital part of the legislative system at Washington. A study of the calendars of the House of Representatives will show that, on the average, one-tenth of the bills and resolutions that pass through Congress are agreed to by conference committees. This proportion may not seem large. However, in this one-tenth of all the bills and resolutions passed are included practically all important bills. Among them are almost all appropriation bills and virtually all those of wide interest and much concern to the country at large, such as immigration bills, tariff bills, tax bills, the Federal Reserve bill, the Federal Farm Loan bill, the Prohibition bill, and bills providing for compensation to veterans of the World War—to mention only a few of those passed in recent years.

Although this conference committee system has functioned actively for seventy-five years, outside of Congress it is little known or understood. It serves several purposes besides its obvious one of adjusting differences between the Senate and the House. By means of the conference committee well-nigh interminable procedure has been shortened and an agency has been provided for perfecting bills approved in most respects by both Houses, but so many times amended as to be inconsistent unless worked over by an intelligent and informed committee. Furthermore, the device of a conference committee makes party control more effec-

tive, and, incidentally, affords a good opportunity for the surreptitious inclusion of legislation for special interests. To guard against the evils of the system, it has been necessary for the Senate and the House to work out methods and means of controlling conference committees. This control has now become fairly effective.

There is no provision in the constitution for this piece of machinery which has so many functions. The founders of the Federal Government set up a legislature with two houses, each to be a check on the other, and they gave more power to the Senate than is usually given to an upper house. However, they provided no agency for adjusting differences between these two houses. A bicameral legislature with a strong upper house made necessary some effective means of settling differences between the two branches. The conference committee was developed to meet that need and then was utilized for the other purposes that have been enumerated.

The conference committee is really a joint committee of the two houses, chosen, as a rule, to settle differences between them in regard to some particular bill.[1] There is a committee selected for each occasion on which a difference arises. Owing, however, to the consistent practice in both houses of Congress of choosing managers by seniority from the committees having the bill in charge from the beginning, conference committees have come to have nearly all of the

[1] Occasionally differences arising over matters other than amendments to bills are referred to conference committees. Such differences may be over prerogatives of the two houses, see Asher C. Hinds, *Precedents of the House of Representatives* (Washington Government Printing Office, 1907), vol. ii, secs. 1485-1495; and on matters of procedure, Hinds, vol. v, sec. 6401. In early and exceptional instances, conferences have been asked over proposed legislation, concerning which no bills were pending, Hinds, vol. v, sec. 6257.

permanent characteristics of standing committees.[1] The members of this committee are properly called managers, although in the debates in both houses they are quite as often referred to as conferees. The usual number is three from each house, but on very important bills this is sometimes increased to five, seven, or even nine. They hold meetings generally in one of the committee rooms in the Senate wing of the Capitol. At these meetings they are supposed, if possible, to find solutions for the disagreements committed to them. They vote as separate committees. Except in the rarest instances, conference committee meetings have not been open to the public, to the representatives of the press, or to the general membership of the two houses.[2] The managers are thus left free to work out the difficulties in complete privacy except in so far as they themselves disclose their deliberations.

There are, in general parliamentary law, two kinds of conferences, the simple conference and the free conference. The term "simple," used in this connection, is an old one and is somewhat confusing to our modern understanding of the word. A simple conference is one at which a committee from one house states the position of that house to a committee from the other house and no discussion follows. The early conferences in England were nearly all simple, but the simple conference has never been used in Congress. The American conference is a free conference. The managers,

[1] To illustrate the difficulty of departing from this practice, see the Senate debate on the question of the appointment of managers of the conference on the Muscle Shoals bill, *Congressional Record*, January 28, 1925, p. 2552 *et seq.* See *infra*, pp. 158-162.

[2] For exceptions, see an instance in the first Congress, *Annals of Congress* (Gales and Seaton), June 26, 1789, p. 631; Maclay, *Journal* (New York, 1890), p. 89, June 26; see *infra*, chapter iii; and an account of La Follette's open conference on the tariff on wool and the free list, in 1911, New York *Times*, August 12, 1911; see *infra*, chapter viii.

that is to say, are free to discuss all the issues in disagreement between the two houses and to use their judgment in settling them, albeit no action of theirs in respect to a bill is final until their report is adopted by both houses. The latitude accorded them does not extend to anything outside the differences committed to them, although there are almost countless instances in which managers have assumed such freedom and exercised it successfully, sometimes with a protest from the floor of the House or the Senate, but oftener, perhaps, without any such notice being taken.

The freedom of the managers is, then, properly, if not actually, restricted to the differences committed to them. It is sometimes restricted also by instructions voted by one house or the other as to particular matters in disagreement. The Senate has rather consistently condemned instructions, taking the stand that the whole conference is bound by the extent to which one of the committees is instructed, and therefore is not full and free. The House of Representatives has almost always maintained its right to instruct its managers. The statement of former Speaker Reed,[1] that instructions do not destroy the free character of a conference, is an expression of this attitude.

To these six or ten, possibly fourteen or eighteen, men who are members of the conference are committed the dif-

[1] See Thos. B. Reed, *Rules and Manual of General Parliamentary Law* (Chicago, 1898), p. 181. Definition of a free conference. "A free conference is one where the conferees meet and present not only the reasons of each house, but such arguments and reasons and persuasions as seem suitable to each member of the committee. Instead of being confined to reasons adopted by either of the Houses, each member may present his own. A conference may therefore be a free conference though each house may have instructed its members and limited them to the terms of the agreement."

"This method of conference is the only one known to our parliamentary law, at least it is the only one now in practice. When two legislative bodies in this country have a conference, it is a free conference."

ferences between the Houses in regard to a certain bill. Sometimes these differences are very great. Sometimes one house has substituted an entirely different bill from that sent it by the other house. Except in so far as they are instructed, the managers have complete liberty to do what they please inside these differences, no matter how wide they may be. If they have two entirely different bills to harmonize, they have great latitude and they may with propriety bring in a new bill.[1]

The managers work under the assurance that the report which they bring in will not be adopted piecemeal by either House, but that it must be accepted or rejected as a whole and cannot be amended.[2] This gives them great power, especially if their report is brought in late in the session when there is no time to examine it carefully to find whether or not the conferees have altered any legislation agreed upon by both Houses or have included anything outside the differences committed to them.

The managers have the further assurance that their report will be given high privilege when it is presented. Because it is a conference report, it will, in either House, be considered in preference to any other form of legislation, no matter how important that may be.[3]

These provisions—those requiring the acceptance or rejec-

[1] See *infra*, chapter vi.

[2] There is no specific rule in either House to this effect. It was accepted in the Senate as part of the general parliamentary law as far back as the fourth Congress. See *Rules and Manual of the United States Senate* (Washington, 1923, hereinafter referred to as *Senate Manual*), p. 211; also *Annals of Congress*, May 24, 1796, p. 104. In the early Congresses there were instances of conference reports which were amended. But see *infra*, chapter iv.

[3] This provision is made in the Senate by Rule xxvii (see *Senate Manual*, 1923), p. 31, and in the House by Rule xxviii. (See *Rules of the House of Representatives* (Washington, 1923, hereinafter referred to as *House Manual*), sec. 885.)

tion of the conference report as a whole, and those securing for it high privilege—are part of American parliamentary law, and give the managers certain important rights. The common practice of presenting reports late in the session gives them no additional rights, but adds enormously to their power. They have no right under the circumstances to alter legislation agreed to by both Houses nor to include new matter, but they do often have the power to do both these things.

Another custom adds to the authority of the managers. They are chosen on the principle of seniority from the regular standing committees of the two Houses having the bill in charge. Thus the same men who work with and direct the course of a bill in its pre-conference stages in both Houses will very likely make up the conference committee to which it is later sent. It is not to be doubted that on many bills of importance they work from the initial stages with the conference report and its special advantages in mind.[1]

The evils and dangers of this conference committee system are perhaps apparent. It gives too much power into the hands of a few men who are not really held to answer for what they do. In the privacy of the conference mutual concessions may be made which involve provisions which would never pass if considered openly in the House or the Senate. The conference committee has much power of independent action but it is not held responsible in any such manner as is a ministry under a cabinet system. No conference committee of either house is forced to resign because it has gone counter to the wishes of the house which it represents. Its members still retain their positions on the regular standing committees and they will be members of the next conference committee which is chosen to settle differences on a bill coming within their province.

[1] See *infra*, chapter vi, on the Tariff Bill of 1883.

These evils and dangers have been recognized almost from their beginning by some American parliamentarians. At times they have been called forcibly to the attention of the two houses and both Senate and House have gradually worked out a system of control over the managers. That this control is adequate can hardly be maintained, but if the rules are evoked with sufficient skill and persistence it is possible for the worst evils to be circumvented.[1] In the meantime the conference committee serves some purposes that are indispensable and others that are desirable.

There must be, in any bicameral system, some means of reconciling differences of opinion between the two chambers, else deadlocks would at times be inevitable. It was almost certainly to prevent such deadlocks that the conference committee was first invented in England in the fourteenth century, the same century in which the English Parliament first assumed its bicameral character.[2] It was partly as a solution for the problem of deadlocks between a Senate and House of Representatives often hostile to one another in the twenty years preceding the Civil War that the distinctive features of the Congressional conference committee system developed.[3] A variety of methods of adjusting differences have been worked out in England and her colonies and on the continent of Europe, which, for one reason or another, have not been found applicable in the United States.[4] As an effective means of actually adjusting differences without forcing the will of one house on the other, the conference committee system is probably superior to any other method that has been devised.[5]

[1] For the various checks upon the managers, see *infra*, chapter viii.

[2] See *infra*, chapter ii.

[3] For this development see *infra*, chapter iv.

[4] See *infra*, chapter ix.

[5] See Temperley's remarks on the merits of the conference committee. H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910), pp. 121-123.

It is clear that deadlocks are to be avoided as ruinous to legislation, but so also is interminable procedure. The conference committee serves to expedite business as well as to prevent deadlocks. This argument has been made for the conference committee for the last seventy-five years. With the enormous increase in the amount of legislation which came with the growth of the country during the nineteenth century, it became necessary to find a way of hastening the progress and insuring the passage of certain important bills in each Congress before the end of the session. The general parliamentary law, worked out long ago in England, included a series of messages between the Houses, designed eventually to bring procedure with regard to any bill to an end. One House might, by these messages, recede from, insist upon, or adhere to, amendments or disagreement with amendments of the other House. A motion to recede was given precedence over a motion to insist or adhere, and a motion to insist would be preferred to one to adhere. The precedence was based on the nearness to "perfection" to which the motion brought the bill. Recession from all amendments meant the passage of the bill. Adherence to amendments or disagreement with amendments implied a finality in taking a stand which did not belong to insistence. Jefferson's Manual says of the term of insisting, which had been newly introduced into parliamentary usage in 1679, that it was a happy innovation as it multiplied the opportunities of trying modifications which might bring the Houses to a concurrence.[1] The new term unquestionably was a desirable addition and the whole system of messages was doubtless well suited to a Parliament or Congress which had plenty

[1] Sec. xlv—Amendments between the Houses, *House Manual*, p. 222. Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President in the years of his Vice-Presidency, from 1797 to 1801. It is always included in every volume of the House or Senate Rules.

of time to dispose of all necessary legislation. To a Congress overwhelmed by the mass and detail of legislation, the procedure involved in these messages might very well be endless because of the number of amendments and because of the time consumed in committee or in debate upon each message of insistence or adherence. Each message goes regularly to the committee having the bill in charge and, when reported, is debated on the floor of the house to which it has been sent. Each time the bill comes back to either house with amendments of the other house attached, amendments may be made to these amendments. These in turn may be insisted upon or adhered to, and so the process may continue.

Through the development of the conference committee system this procedure has been greatly shortened. It has come to be the general practice, with regard to important bills, for either house, upon receiving a message of insistence, to request a conference immediately. This message of insistence is often sent by the house making the first amendments to the bill after receiving it from the originating house. Sometimes the request for a conference is made at this same time. This, in fact, often happens with important bills which originate in the House of Representatives. The Senate amends such a bill, insists upon its amendments and requests a conference with the House of Representatives before the House has had any opportunity either to agree or disagree with the Senate amendments. The request for a conference is generally granted. The report of the conference committee is not regularly referred to the standing committee having the bill in charge in the Senate or the House, but is considered directly by the whole body in either case. When the fact is recalled, furthermore, that the conference report cannot be amended, but must be accepted or rejected as a whole, it can readily be seen how greatly the

conference committee system has expedited the passage of necessary bills.

The conference committee system thus serves the two purposes of settling differences and shortening procedure, purposes vital to any bicameral system. It serves another need that is peculiar to our Congressional government. The fact of the absence of executive responsibility for legislative leadership, together with the preponderating power of the Senate, has made of our bicameral system a different thing from that of any similar system in any other country. In England and the British self-governing colonies, the cabinet system accompanies the bicameral system. The same thing is true of the countries on the continent of Europe, which have, nearly all of them, copied the English system. Under cabinet rule there is a responsible agency, charged with the duty of legislative as well as executive leadership. When a cabinet fails in this leadership it retires and another takes its place. In the United States the principle of the separation of powers prevailed when the Constitution was written and, except through a Presidential message, the executive was given no power, right or duty of leadership of Congress, and no other leadership was provided for Congress. This is one of the principal reasons why the conference committee has developed the unusual power it possesses. Although it can hardly be maintained that the conference committee system has furnished the leadership which was not provided by the Constitution, still it can scarcely be denied that such lack of leadership did furnish the conditions under which the conference committee could grow powerful.

Party control has constituted nearly all the leadership there has been in Congress and, just as in England, it was through the rivalry of political parties that the cabinet system developed, so in the United States, party power has seized upon the conference committee as an effective means

of control. Conference committees are made up of majority and minority party members, generally with the majority party members in the majority in the conference. Certainly when any bill involving a matter of political contention is under consideration, the majority party controls the conference. Party discipline has not infrequently forced the granting of a conference by one house at the request of the other. It rules, furthermore, in the action taken on the report brought in by the managers.[1]

There have been indications at times of a possibility of using the conference committee system as a means by which the President and his cabinet might exercise legislative leadership. If this could be so, it would seem to be salutary, for the President is held responsible by the people—responsible for his own acts and for those of the members of his cabinet. With the development of the party system, the President as party leader has undoubtedly gained in legislative leadership. But although examples of executive influence upon conference committees can be found scattered throughout Congressional history,[2] there are too many factors in the situation which are unfavorable to such influence to make any important development in that direction likely. The very checks put upon the managers by the Senate and the House in their efforts to control the conference committees would restrict the President in the possible scope of his influence.[3] Unless the President has had the power to guide a bill from its initial stages and has taken it upon himself so to guide it, he can do practically nothing to change it at the conference stage.[4]

[1] See *infra*, chapter vi.

[2] See *infra*, chapter viii.

[3] See especially the instance of President Taft's attempt to change the character of the Payne-Aldrich Tariff bill. *Infra*, p. 174.

[4] See *infra*, pp. 175, 176 for Wilson's influence on the Tariff and Currency bills of 1913.

The cure for the evils of the conference committee system does not lie in executive interference. Rather must it come through improvement in the rules controlling the managers, thus giving to those members of either house who are ever on the alert to detect underhanded dealing a better chance of success in disclosing it. In the meantime the conference committee serves well in its constructive aspects. The following chapters will trace its evolution as nearly as may be from early beginnings to the present position of power.

CHAPTER II

The Origin and Pre-Congressional Development of the Conference Committee

The conference committee, like the bicameral system, had its origin in England very early in the development of the English Parliament. Sometime in the first half of the fourteenth century the members began to sit in two Houses. The lower clergy had ceased to attend, the knights had found it to their interest to join with the burgesses, and the higher nobility and higher clergy were left to make common cause and form the upper house.[1] Business could be dispatched more speedily if the knights and burgesses debated by themselves and not in the presence of the lords and prelates. At the direction of the king, therefore, the lords and prelates sat in one house and the knights and burgesses in the other. The bicameral system was thus established.[2]

From the first the two houses seem to have had much freedom of intercourse. As early as the reign of Edward III it came to be a custom for a number of the Lords, selected either by their own House or by the House of Commons, to be assigned to confer with the whole body of Commons on the answer to be given to the king's request for money. At first the two Houses made separate grants of money, but in 1341 there are recorded cases in which the Lords and Commons joined in petition. Stubbs thinks that in all cases of

[1] Marriott, J. A. R., *Second Chambers* (Oxford, 1910), p. 7.

[2] Stubbs, William, *Constitutional History of England* (Oxford, 1880), vol. ii, p. 645.

money grants not only conference but agreement must have been the rule. There is one instance in 1383 when Richard II tried unsuccessfully to interfere with the right of communication by attempting to nominate the committee of Lords to meet with the Commons. This occasion is the only one known on which any king made such an attempt.[1]

But this meeting of select Lords with the House of Commons was not the only form of conference between the two houses, even in the fourteenth century. Once in 1378 the Lords objected to a request for such a conference, saying that the plan of long standing and the proper plan was to have a number from each house meet together, after which each of the two committees should report to its own house.[2] This describes a real conference committee system and indicates that it existed before 1378.

As the Journals of the House of Commons do not begin until 1547 and the somewhat earlier records of the House of Lords are extremely brief, there is no means of knowing for certain what were, before the middle of the sixteenth century, the orders and usages governing the procedure of the two Houses. The first conference recorded in the Journals took place in 1554 when in the House of Commons "the Master of the Rolls and Mr. Solicitor declared from the Lords that they had appointed the Lord Chancellor, four earls, four bishops and four barons to confer with a number of this House, who were immediately sent unto them."[3] Another conference is recorded in greater detail in 1604 on the subject of wardship. The House of Commons asked this conference. Sir John Stanhope, Knight, Vice-Chamberlain to his Majesty, accompanied by a large delegation for-

[1] Stubbs, *op. cit.*, p. 645.

[2] Stubbs, *op. cit.*, p. 646.

[3] *House of Commons Journals*, vol. i, p. 38; and Porritt, Edward, *The Unreformed House of Commons* (London, 1909), vol. i, p. 557.

mally named by special commission, delivered to their Lordships the desire and pleasure of the House. Upon his return he reported that their Lordships would willingly join with the Commons in a conference. For their number and the time and place of meeting they would send answer by a messenger of their own. The Master in Chancery, who carried the message from the Lords to the Commons, informed the latter "that their Lordships had named thirty of that House to meet such a number of this House as should be thought fit; the place and time to be the Painted Chamber at two o'clock in the afternoon." [1] After the time of Henry VIII, conferences were generally held in this Painted Chamber, an old building situated near the Chamber of the Lords and also near St. Stephen's Chapel, which was the Chamber of the Commons.[2]

The usages of conferences may be traced in these early Journals. It was the rule that the number of the Commoners should be twice that of the Lords. For instance, in the conference of 1604 the Lords named thirty peers and the Commons sixty of their membership. The time and place, usually the Painted Chamber, were always to be appointed by the Lords. The Lords came in a body, expecting the Commoners to await them. They sat with their hats on while the Commoners stood with their hats off. While a conference was in session all other proceedings in both Houses were suspended.[3]

In preparing for these conferences there was a definite procedure in the House of Commons. First a committee was appointed to draw up reasons to be presented to the House of Lords. This committee made a report to the

[1] *House of Commons Journals*, vol. i, p. 154.

[2] Sir Courtney Ilbert, *Parliament, its History, Constitution and Practice* (New York, 1911), pp. 122, 123.

[3] Sir Erskine May, *Parliamentary Practice* (London, 1924), p. 591.

House which was read a first and second time, at each stage subject to amendments from the floor. If the report was then adopted it became the Commons' presentation of their case to the Lords.[1] The next proceeding was to choose another committee of members to represent the Commons at the conference and to present the reasons of the Commons to the committee of the Lords. At the conference members of neither House were at liberty to speak either to enforce resolutions or reasons given or to offer objections to them. The spokesman of the committee read the resolutions and afterwards delivered the paper on which they were written to the managers of the other house. The conference was then finished and the managers reported to their respective houses what had taken place.

The conference just described was a simple conference. There might be several conferences on one bill. The first two were always simple. The third conference was a free conference, and the managers were then at liberty to make their own arguments; to offer and answer objections; in other words, to attempt by personal persuasion to bring the two Houses into an agreement which had not been effected by written reasons.[2] This third conference was always asked by the house which had asked the first one. If the first conference, a simple one, failed to reconcile the differences, a second simple conference was asked, this time by the other house. If the second simple conference failed also, it was now the turn of the first house to ask the third conference, a free one. Thus if the House of Commons asked the first conference, then the House of Lords asked the second and the House of Commons the third.

It was in the seventeenth century that the most noteworthy conferences were held. There were then two questions

[1] *House of Commons Journals*, vol. i, p. 350; Porritt, *op. cit.*, p. 558.

[2] Porritt, *op. cit.*, p. 559; May, *op. cit.*, p. 590.

which caused the most serious conflict between the two Houses. One of these was the question of the right of judicature of the House of Lords.[1] The other was whether or not the Lords should be privileged to amend money bills. In the matter of judicature the Lords were asserting a privilege which they found it difficult to sustain by precedents in parliamentary history. The Commons, on the other hand, in denying to the Lords all right of amending money bills, were claiming for themselves a privilege which had never been fully accorded them in the history of Parliament as a bicameral body. In disagreements over judicature the Lords preferred the simple conference while the Commons were particularly anxious that free conferences should be held in order that the pretensions of the Lords might be discussed freely.

In one such case, in 1675, that of Sir John Fagg, a member of the House of Commons, who was summoned to answer in a suit before the House of Lords while Parliament was in session, there was a long debate in the House of Commons as to whether a conference should be asked with the Lords over the situation. The matter was taken very seriously by the Commons. In the debates Sir Thomas Lee told them repeatedly that unless they should ask the first conference they would never have a free conference.[2] In another case, in 1675, one very similar to that of Fagg, counsel, who were members of the House of Commons, refused to plead in the House of Lords against another member of the House of Commons. In this case of Mr. Onslow, the Lords consented to the Commons' request for a conference on condition that the particular question of judicature should not be discussed. As this was the very subject upon which

[1] See Hallam, *Constitutional History of England* (London, 1908), vol. iii, p. 19 *et seq.*; *House of Commons Journals*, May 22, 1660.

[2] Grey, *Debates* (London, 1769), vol. iii, pp. 113-147 *passim.*

conference was desired by them the Commons very naturally refused to send their committee to confer with the committee of the Lords. The Lords were affronted at this refusal. The Commons' reasons for it were soon afterward delivered by Sir Thomas Lee at a conference between the two houses.[1]

In both types of serious disputes between the houses, the House of Commons usually asked the first conference. In the matter of judicature it was in order that they might have a free conference later on in which the unreasonableness of the Lords' pretensions might be discussed informally. In the matter of the Lords' making amendments to money bills, the Commons regularly sent over, with their protest against the amendments, a request for a conference. Here the situation was reversed and the Commons were quite as likely to refuse to discuss the reasons involved in the position which they took. Only two simple conferences were permitted by the rule. The third was perforce a free conference. In one instance of a dispute over a money bill in 1671, when, after the two simple conferences had been held, a free conference was suggested, the Lords complained that the Commons were so prepossessed in their judgments that a free conference could not be held.[2]

There was much significance in this controversy of 1671.[3] The Commons had passed a bill imposing duties on certain foreign commodities, among them sugar. The Lords had amended it by lowering the duty on sugar. As soon as the bill with this amendment was read in the House of Commons, that body resolved that in all aids to be given to the King by the Commons the rate ought not to be altered by

[1] Grey, *op. cit.*, vol. iii, pp. 207-231 *passim.*

[2] *The Parliamentary History of England* (London, Hansard, 1808), vol. iv, pp. 480-495, 23 Charles II, 1671.

[3] It is known as the Great Controversy between the Houses. See *ibid.*, p. 480.

the Lords. They proceeded to draw up reasons for a conference to be had with the Lords, and the Lords agreed to the conference. At this meeting the representatives of the Commons communicated to the Lords that there was fundamental right in that House alone, on bills of rates and impositions on merchandise. The committee of the Lords, in the second conference, claimed the right to alter such a bill as fundamental and inherent. They said that by the new maxim of the House of Commons a hard and ignoble choice was left to the Lords, either to refuse the Crown supplies when they were most necessary or to consent to ways and proportions of aid which neither their own judgment or interest nor the good of the government and the people admitted. They asked by what charter or contract the Lords divested themselves of this right and gave it over to the Commons. The Commons replied in writing in the third conference that they relied upon usage on their side and non-usage on their Lordships' part, as the best evidence by which their Lordships or they, the Commons, claimed any privilege.[1] Parliament was prorogued, thus putting an end to this particular controversy.

This conference, together with one in 1661 over the small matter of a bill passed by the Lords to pave and repair the streets in the neighborhood of Westminster,[2] and another one in 1678, on a matter of considerable importance to the King, thoroughly established the right of the Commons to originate all money bills, and left very little right to the Lords to amend such bills.

In 1678 a bill had been passed by the Commons in due form to grant the King money to pay and disband certain military forces. It was sent to the Lords and while it was

[1] *The Parliamentary History of England, op. cit.*, p. 487 *et seq.*

[2] *House of Commons Journals*, vol. viii, pp. 311-315; Porritt, *op. cit.*, p. 549. In this case the Commons ordered the bill from the Lords to be set aside and then passed one exactly like it.

there the King informed the Lords that a difficulty had arisen over the treaty of peace and therefore the troops could not be disbanded. The Lords amended the bill, extending the time for disbanding, and as the Commons were impatient regarding their bill which they had sent to the Lords six days before, the Lords sent the amended bill back on the next day. The House of Commons immediately rejected the amendment and appointed a committee to present to a conference the reasons why the House would not agree to it. In the usual manner this committee presented its report in the form of resolutions to be presented to the House of Lords. It was read twice and agreed to. The resolutions declared that the Commons found "themselves obliged to disagree with the Lords' amendments by reason of the methods and rights of their House in a matter very tender to them." They offered to compromise by themselves setting a different day for disbanding,[1] thus proving the conflict to be a constitutional one and not one over the merits of the bill. The controversy continued, for the Lords would not accept the compromise and the Commons would not recede. The House of Lords asked another conference that His Majesty might not want the money so necessary to his service and to the kingdom's quiet. The second conference, however, did not break the deadlock, as neither House would recede. Finally, a committee of the Commons appointed for the purpose drew up a set of resolutions comprising a statement of the rights of the Commons in granting money. It maintained that all bills for supplies and aids should begin in the House of Commons, were the sole gift of the House of Commons, and should not be altered by the Lords. At the third conference, the Commons presented this statement and declared that they adhered to their first

[1] *House of Commons Journals*, vol. ix, pp. 493-515; *House of Lords Journals*, vol. xiii, pp. 251-269; Porritt, *op. cit.*, pp. 552, 553.

position with regard to the amendment of the Lords. They asked the Lords to consider the condition the country would be in if the bill did not pass and they laid the responsibility for its failure upon the Lords. They had delivered their ultimatum to the Lords.

The bill was lost, as it was still with the Commons, where the Lords had left it, when Parliament was prorogued. But if the bill was lost, the principle asserted by the Commons was not. Ever since this contest the House of Commons has been governed in the matter of money bills by the resolutions described, which were adopted on July 3, 1678. These resolutions did not in terms affect the power of the Lords to reject a money bill, although they did deny them the power of initiating or altering such a bill. The Lords could not be taxed without their consent but this was, in money matters, practically the only right left them.[1] In the half-century following this successful assertion of right by the House of Commons the Cabinet system was slowly developed. For several reasons successive Cabinets recognized the privilege of the House of Commons in the matter of money bills and first introduced all such bills into the lower House.[2]

Porritt considers the stand taken by the Commons over the Westminster bill in 1661, over the duty on sugar in 1671 and over the disbandment of military forces in 1678—the three controversies which have just been described—as of inestimable value to the country. This position was taken by the House of Commons of the Restoration and Pensioner

[1] See Porritt, *op. cit.*, p. 554.

[2] See an instance cited by Porritt, *op. cit.*, p. 555, in which a legislative bill in 1747 was introduced by the Lord Chancellor in the House of Lords, but because doubts were raised as to whether a compensation clause which it contained made it a money bill, the Government quietly withdrew the bill from the House of Lords and introduced it in the House of Commons.

Parliaments, Parliaments not ordinarily associated in the minds of historical students with constitutional advance.[1]

The House of Commons had asserted itself through conference committees in the three crises of 1661, 1671 and 1678. In these three conflicts are to be found examples of both simple and free conferences. The simple conference was more desirable for the purpose the Commons had in these critical days. The simple conference, with its formal statement of reasons, served to maintain a position and to define it to the country and to posterity. If the reasons were sustained at the time they stood as a precedent in favor of the victorious house. Even if, as in 1678, they were not sustained at the time, they stood as a definite statement of the attitude of the House of Commons, from which, on later occasions, it could refuse to depart.

But great as was the significance of the conferences in the seventeenth century, their importance died out with the

[1] *Op. cit.*, pp. 556-7. "At a time when modern methods of taxation were originating; when the feudal obligations of the great landowners were at an end; when the clergy were ceasing to be taxed by convocation; and when England was settling down to the new economic and social conditions which date from the Restoration, the House of Commons boldly asserted its position in respect to the Lords, and reasserted and made secure the right of the Commons to the control of the public purse. Any wavering or compromise on the part of the House of Commons at these crises might have put the lower House into some such impotent position as that now held by the House of Representatives at Washington with regard to fiscal legislation. As it was the House of Commons then compelled the House of Lords to stand clear when legislation imposing taxation was being formulated. The result was that when the era of personal government came to an end and was succeeded by government by cabinet, the existence of a cabinet came to be dependent solely on the House of Commons; and when England became a great colonial power and representative government was established in Canada and Australasia and in the British colonies in Africa, from the first the chambers elected by the people were placed as in England, in control of the purse, and the existence of the administration as in England was made dependent on the support of that House of Parliament in which bills for levying taxation must originate."

development of the cabinet system in the eighteenth century. Great matters were no longer settled in conference but in the cabinet. Conferences did not altogether disappear on the advent of the cabinet system. They continued to be held occasionally on comparatively unimportant matters down to the middle of the nineteenth century. In 1851, however, the two Houses agreed to receive reasons for disagreement by message unless a conference were especially desired. Conferences are now in England practically of the past, although the machinery for them is still in existence.[1]

It was in this seventeenth century in which the conference became so important in England that the American colonial legislatures developed their systems of procedure. In the records of many of the colonies may be found much evidence to show the general employment of the conference committee as a means of reconciling differences between the two Houses. An earliest conference recorded was one asked by the House of Deputies of the Colony of Massachusetts Bay in 1645 on the curious question of licensing ships to fight in the harbor. In 1653 a protest or remonstrance against the action of the magistrates in regard to preparation for defense was to be issued at a conference. There is other evidence also that the conference was a regular institution in Massachusetts Bay, and that it was used much as in England.[2]

The Maryland Archives also give early examples showing the use of conferences. On March 12, 1659, the House of Burgesses issued a formal statement to the effect that it constituted the highest court of judicature in the colony. Upon the protest of the Upper House, the House of Burgesses asked a conference, which was "condescended unto."

[1] May, *op. cit.*, p. 589.

[2] *Records of Massachusetts Bay in New England* (Boston, 1854), vol. iii, pp. 16 and 310.

Other recorded conferences were held in 1661, 1662, 1663 and 1669. At these conferences such matters were discussed as the appointment of officers, the height of fences, military discipline, the Secretary's fees for searching the Records for a desired piece of information, the manner of trial of an accused person, the publication of marriages, land claims and the impeachment of an officer. These conferences were not all held by committee. Sometimes the Speaker and the whole Lower House went up to the chamber of the Upper House and participated in the conference.[1] This resembles somewhat the ancient custom in England of having a committee of the Lords meet with the whole House of Commons.

The lower house in the American colonies, representing as it did the people of the colony, was the stronger of the two. The upper house represented only the distant interests of the owners or the King in England. The New Jersey Archives recount in a letter from the Governor an interesting instance in 1739 when the lower house refused to confer with the upper house on a money bill. The Governor complained that if the Assembly persisted in this practice on other bills it might mean a total exclusion of the council from participation in legislation.[2]

[1] See *Maryland Archives* (Baltimore, 1884), March 12, 1659; Apr. 26, 29, 30, 1661; Apr. 3, 7, 8, 1662; Sept. 21, 1663; Apr. 19, 26, 29 and May 5, 1669, vol. i, pp. 398-434, *passim*, vol. ii, pp. 168-194, *passim*.

[2] "The Assembly, indeed, when they raised any money by act have pretended a right not to admit the Council to amend a money bill and the Council on the other side have insisted on a right to amend any money bill if they thought fit; though they often declined doing of it rather than hazard the support of ye government, but this they took to be a quite different case, because by the express words of the acts which raised the money both Governor and Council as well as Assembly were impowered to direct in the disposition of it; however, to avoid as much as might be any dispute on that head, the Council did not proceed directly to make the amendments they thought necessary; but desired a conference with them on the subject matter of the bill. The Assembly naturally enough concluding that the Council intended by this

The Council, however, was not totally excluded. Amendments were made by it on other occasions, and conferences were held on the amendments in disagreement. There was an instance in 1743 of a bill involving money which was amended by the Council. This bill was entitled "an act for ascertaining the fees to be taken by the several officers in the Colony of New Jersey." It had passed the Assembly unanimously but had been amended by the Council. The Assembly objected to some of the amendments, and committees of both houses were appointed to confer upon and settle the differences. This conference came to a successful issue.[1]

That the conference committee was used in Virginia in colonial days is evident from a protest made by the Council in 1749. The House of Burgesses had demanded the Journals of the Council in order to examine as to whether or not that body had violated a right and privilege of the House of Burgesses. The Council were greatly incensed and declared that whenever either house had been dissatisfied with the other, "conferences had been usually desired and the subject matter of dispute amicably debated and thereby misunderstandings commonly rectified and that harmony and good agreement which ought always to subsist between them, cultivated and maintained." [2]

In the struggle for independence and in the days before the revolution the two houses in the different colonies drew

conference to propose some amendment to the bill... not only refused to confer with them, but declared it to be inconsistent both with the interest of the Province and the privileges of their house to admit of any alterations to be made in it. This they might have said if they had so pleased with respect to any other bill or all bills and would have been if persisted in a total exclusion of ye Council." Letter from Governor Morris to Sir Charles Wager, *New Jersey Archives*, series i, vol. vi, p. 63, May 10, 1739.

[1] *Proceedings of the Assembly of New Jersey*, October 21, 1743.

[2] *Calendar of Virginia State Papers*, vol. i, p. 241.

further apart; or, if they did not draw apart, they came to be controlled by a strong party group, such as the Junto, led by Samuel Adams in Massachusetts, which, after the election of 1766, controlled the Council as well as the lower house. In North Carolina a group of four men out of a small Council agreed to work together and allied themselves with the fairly compact following of John Starkey in the lower house. This was a development similar to that of the Cabinet in England. Except in North Carolina, this tendency toward a cabinet form of government died with the Revolution. Even in that state the legally sanctioned continuance of the Junto under the name of the Committee on Public Bills or Grand Committee, as it was sometimes called, did not become permanent.[1] In spite of the use that had been made of party machinery to bring the Revolution about and to complete it, the framers of the new order were suspicious of parties and had little inclination to legalize the unofficial organizations which they felt to be pernicious. It is very probable also that they had no real understanding of the English Cabinet System. They proceeded to organize the state governments on lines that led to the development of the conference committee rather than the cabinet system.

In New York State the conference committee was provided for in the Constitution of 1777. In case of differences between the Assembly and the Senate conferences were to be held in the presence of both houses and managed by committees from each house to be chosen by ballot.[2] Here was publicity. There was to be no secret agreement between powerful groups in the two houses if the constitution makers could help it. These conferences were held in public, as the

[1] See Harlow, R. V., *The History of Legislative Methods before 1825* (New Haven, Yale University Press, 1917), pp. 28-91, *passim.*

[2] Thorpe, F. N., *The Federal and State Constitutions* (Washington Government Printing Office, 1909), vol. v (published in *U. S. House Documents*, vol. 91, p. 2632).

Autobiography of Martin Van Buren makes plain. Van Buren tells of the strong disagreement between the Assembly and Senate over the matter of New York State's supporting the Federal Government in prosecuting the War of 1812, and of repeated public conferences between the two houses concerning differences on this subject. In no instance was a vote changed in either house by these public debates, but to Van Buren's way of thinking, they exerted a very salutary influence upon the public mind. The members as well as the audience became greatly excited on some occasions and once a Republican Senator from Schoharie stepped forward at the close of Van Buren's speech and embraced and kissed him while he thanked him for what he had said in the presence of the two houses.[1]

The public conference did not become general, however, in the American State legislatures, although the conference committee was much used. In 1790 Samuel Adams wrote in a letter to John Adams: "The American legislatures are nicely balanced. They consist of two branches, each having a check on the other. They sit in different chambers and probably often reason differently in their respective chambers, on the same question. If they disagree in their decisions, by a conference their reasons and arguments are mutually communicated to each other. Candid explanations tend to bring them to agreement." [2]

The framers of the Federal Constitution of 1789 shared Adams' belief in checks and balances; probably also his faith in the conference committee as a reasonable means of maintaining harmony between the two branches of the legislative body. The next chapter recounts numerous instances in which the conference committee was employed in the first Congress.

[1] Van Buren, Martin, Autobiography, in American Historical Association *Annual Report of 1918* (Washington, 1920), vol. ii, p. 44.

[2] Adams, John, *Life and Works*, vol. vi, p. 421.

CHAPTER III

The Conference Committee in the First Congress.

From the very beginning of our Congressional history, the conference committee was the accepted method of adjusting differences between the House of Representatives and the Senate. At the beginning of the first session of the first Congress, on April 7, 1789, the next day after a quorum had finally been secured and a meeting of Congress could be held, the Senate charged a committee with the duty of preparing rules for the government of the two houses in the case of conference. The members of this committee were Oliver Ellsworth of Connecticut, Richard Henry Lee of Virginia, Caleb Strong of Massachusetts, William Maclay of Pennsylvania and Richard Bassett of Delaware.[1] Oliver Ellsworth as chairman of this committee wrote a letter to Speaker Muhlenberg of the House of Representatives announcing the appointment of this committee. This letter the Speaker laid before the House, whereupon the House proceeded to vote for the members of a committee to meet that of the Senate.[2] They chose Elias Boudinot of New Jersey, Roger Sherman of Connecticut, Thomas Tucker of South Carolina, James Madison and Theodoric Bland of Virginia.

The result of the report of this joint committee was a joint rule of the two houses which read as follows:

[1] See *Annals of Congress*, 1st Cong., 1st Sess., p. 18, April 7, 1789.

[2] *Annals*, 1st Cong., 1st Sess., p. 109, April 9, 1789.

Resolved, That in every case of an amendment to a bill agreed to in one house and dissented to in the other, if either house shall request a conference, and appoint a committee for that purpose, and the other house shall also appoint a committee to confer, such committees shall, at a convenient time, to be agreed on by their chairmen, meet in the conference chamber, and state to each other verbally, or in writing, as either shall choose, the reasons of their respective houses for and against the amendment and confer freely thereon.[1]

As will readily be seen, this is a provision for a free conference. It is likely that it is taken from the practice in some of the States. There is not enough discussion of it, either in the reports of the House debates in the *Annals,* or in Maclay's *Journal,* which recounts so much of the Senate proceedings, to warrant the belief that any part of it was invented by the committee which reported it. Nor is it likely that it was taken directly from the English usage. In another connection Maclay quotes John Adams, who was the first Vice-President and President of the Senate, as saying that conferences were very seldom used by the houses in Great Britain.[2] The cabinet system had, of course, by this time made conferences unnecessary in England.[3]

A number of conferences were held in the first Congress and the bills referred to them dealt for the most part with subjects on which the houses were then, and have since been, most likely to disagree. The impost bill, a salary of Members bill, the amendments to the Constitution, a bill to regulate the processes of the Courts, the Treasury bill, the Post Office bill, the bill to regulate trade and intercourse with the Indians—these and others were considered by conference committees. A study of the discussions of the ask-

[1] *Annals,* 1st Cong., 1st Sess., p. 20, April 15, 1789.

[2] See Maclay, *op. cit.,* p. 32, May 14, 1789.

[3] *Cf. supra,* p. 33.

ing and granting of these conferences, their proceedings, their reports and the treatment of their reports, brings out many differences between them and the conferences of the past seventy-five years. These differences, however, are not nearly as great as might have been expected. For instance, the question which is so closely associated with the modern development of conference committee power, of whether or not the conference report may include new matter—that is, matter not contained in the bill or amendments committed to the conference committee—was discussed in connection with one conference report presented in this first Congress. It is true that it could not have been of very great importance at that time, for the conference report was then capable of amendment by either house and might be adopted in part by either house. Any objectionable clause inserted by the conferees could be struck out.

Some technical questions of procedure arose which became familiar in later years. One of these was the question of where the actual bill must be when the report is made in the Senate or the House, and the conclusion was the same as in later years, that the bill should be in the house where the report is being presented. The significance of this will be made clear in the account of the conference on the impost and tonnage bills.

A study of the personnel of the managers of these conferences in the first Congress discloses the fact that in each house the same men served in that capacity again and again and on bills covering widely differing subjects. This is like the practice of later years which has made a few men the managers of nearly all the conferences on important bills. However, the reasons for the practice must have been different in the first Congress from what they are in modern times. In modern times the principle of seniority has ruled and managers are chosen according to their length of service

on the standing committees in the two houses and according to their party affiliation. In the first Congress seniority had not yet developed and in that respect all members were on an equality. The same men were probably chosen for the different conferences because they showed ability and success in dealing with the committees of the other house, and always, then, the only purpose connected with a conference was that of reaching agreement.

The first conference was held not over a difference in regard to amendments to a bill, but over a question of etiquette. Although it caused much debate, especially in the Senate, it must be considered here very briefly as it was not a typical conference, even in the first Congress, and did not come under the rule which had been adopted governing conference committees. The question in dispute was the manner in which the President of the United States was to be addressed by the two houses. The Senate wished to adopt a title, the House did not. According to Maclay, Vice-President Adams opposed, as not being in line with the English practice, the plan of having a conference on any subject other than a difference on amendments to a bill. The conference report in this first instance resulted in a compromise, the Senate agreeing for the time being to adopt the plan of the House and use no titles, although they still believed in their use.[1]

The first conference held over a legislative disagreement and coming properly under the rule which had been adopted, was over disagreement of the House to amendments by the Senate to the impost and tonnage bills. The dispute was over the question of discrimination in favor of nations having treaties with the United States, granting their nationals the privilege of paying less tonnage and lower duties than other foreigners. The Senate had amended the House bills

[1] Maclay, *op. cit.*, p. 33, May 14, 1789.

by striking out the clauses providing for the discrimination. In the House, Madison was passionately attached to the principle of discrimination [1] and brought his influence to bear to induce the House to non-concur with the Senate amendments. The Senate adhered to its amendments and sent back the bills to the House. Madison was inclined to urge the House to adhere also, but in the debate on the question of requesting a conference with the Senate, he agreed to this course in the hope of reaching a compromise. Members of the House Committee were Boudinot, Fitzsimmons and Madison.[2] The Senate agreed to the conference and appointed Morris, Lee and Ellsworth.[3]

Maclay's account of this conference shows it to have been conducted somewhat according to the manner prescribed by the New York State Constitution of 1777.[4] The committees did not exactly debate in the presence of the two houses but the meeting was open to members of either house. When Maclay came down to the Senate Hall on June 26, he found that the conference had begun. The Senate met but the managers were absent at the conference. The members strayed in and out of the conference chamber, and since the attention and interest were so evidently centered there, the Senate adjourned.[5]

The *Annals of Congress* also report that no business was done in the House of Representatives on that day, since a number of members attended the interesting conference on the impost and tonnage bills.[6] There is no account of any

[1] See Ames, Fisher, *Works* (Boston, 1854), vol. i, Letters to Minot, p. 48, May 29, 1789.

[2] *Annals*, 1st Cong., 1st Sess., June 24, 1789, pp. 608-614.

[3] Maclay, *op. cit.*, p. 89, June 25, 1789.

[4] *Supra*, pp. 36, 37.

[5] Maclay, *op. cit.*, p. 89, June 26.

[6] *Annals*, 1st Cong., 1st Sess., June 26, 1789, p. 631.

other such open conference from that time until 1911, when, under the leadership of Senator La Follette, the tariff conference was opened to the representatives of the press.[1]

When on the next day after this first conference, June 27, the Senate managers reported, no action could be taken because the papers, that is, the bills and amendments to them, were in the House of Representatives. Thus early did the rule prevail that the conference report could not be acted upon unless the papers were in the house receiving the report. According to the modern practice, the papers should have been with the Senate and the report should first have been made there.[2] The Senate was strongly of that opinion at the time. Senator Robert Morris, Chairman of the Senate Committee of Conference, actually went to try to get the bills from the managers on the part of the House. There seemed, Maclay said, to be a jealousy between the two houses as to which should act first, as the one which acted last would have the blame of rejection if the bill should be lost. So strong was this feeling that some Senators wanted to act on the report of the managers even if the bills were not in the Senate, but it was decided at length to let the reports lie for consideration.[3]

In this case the conference committees did not make identical reports in the two houses and in neither house was the

[1] See *infra*, p. 177.

[2] There seems to have been some confusion as to where the papers should have been. Under the modern practice the papers should be left with the house agreeing to the conference if the managers come to an agreement, but if they do not reach agreement the papers may remain in the house which asked the conference. See Hinds, *op. cit.*, vol. iv, sec. 3905 footnote, and vol. v, sec. 6571-6584. In this case in the first Congress the House had asked the conference but apparently had sent the papers over to the Senate with the request. The Senate, rather the Secretary of the Senate, had sent them back to the House with the message agreeing to the conference.

[3] Maclay, *op. cit.*, pp. 90, 91, June 27.

report adopted as a whole. The conference resulted, however, in agreement between the houses. On the same day that the Senate decided to observe the rule in regard to the papers, a message was received from the House announcing that it adopted all the amendments of the Senate to the impost bill which related to discrimination. The Senate immediately receded from its other amendments to which the House had not agreed. Thus agreement was reached on the impost bill. On July 1, after the Senate had adhered to its amendment abolishing discrimination in the tonnage bill, the House finally agreed to that also and both bills were passed.[1]

This first conference has seemed worth describing in detail. It concerns a subject over which, whenever it has been considered, there have almost always been serious differences between the houses. In this conference, also, are elements of controversy and problems of procedure that will be found to repeat themselves in future conferences. It happens, furthermore, that there is more official descriptive material available on this than on any other conference of the time or, for that matter, on all but a few conferences of later times. The other conferences of the first Congress must perforce be considered much more briefly.

The next conference, which was held in August, 1789, on differences in regard to the Treasury bill, resulted in the Senate's receding from its amendments. This conference, like the first, was asked by the House and the report made by its managers, at least in the House, was verbal.[2] The

[1] Maclay, *op. cit.*, p. 96, July 1, 1789; and *Annals*, 1st Cong., 1st Sess., July 1, 1789, p. 634. Of this matter of discrimination Fisher Ames, who was a member of the House of Representatives, wrote in a letter to Minot, May 14, 1789, "The Senate will, I trust, revise our doings with a temperate spirit. The Senate is a very respectable body." Later, on May 27, he wrote, "The Senate, God bless them, as if designated by Providence to keep rash and frolicsome brats out of the fire, have demolished the absurd, impolitic, mad discrimination of foreigners in alliance from other foreigners." Ames, *op. cit.*, vol. i, pp. 37 and 44.

[2] *Annals*, 1st Cong., 1st Sess., August 10, 22, 25, 1789, pp. 715, 808, 815.

matter in dispute was the removability of the Secretary of the Treasury by the President. Madison, the chairman of the committee on the part of the House, reported, when called upon. He said that the committee had met and conferred upon the subject; that the members on the part of the Senate had stated the reasons on which their amendment was founded. As these were not satisfactory to the committee on the part of the House, they had submitted certain propositions to the committee of the Senate, who on their part had offered none. Mr. Madison further reported it to be the opinion of the committee on the part of the House that it would not be right for the House to recede from their disagreement. This report was made on August twenty-second. On August twenty-fifth the Senate sent a message saying that they had receded from their amendment.

The question of salaries of Senators and Representatives has often been a subject of controversy between the two houses. It was so in this first session of the first Congress. The Senate amendment to the House bill dealing with the matter had increased the daily pay of the Senator and not that of the Representative, and the Senate had insisted upon this discrimination. Of course the House disagreed. The House asked a conference, appointing Sherman, Tucker and Benson as managers. The Senate agreed to the conference, and their managers were Rufus King of New York, Ralph Izard of South Carolina and Robert Morris of Pennsylvania.[1] This conference came to no precise agreement, according to the report of the managers on the part of the House, but by way of compromise the committee on the part of the Senate had proposed that the compensation provided for by the present bill should be limited to seven years, or that the House should pass a law providing for the compen-

[1] *Annals*, 1st Cong., 1st Sess., Sept. 7, 8, 9, 10, 1789, pp. 77, 79, 921, 922, 923.

sation of the Representatives without including the Senators. This latter suggestion was evidently dismissed as impracticable and a motion embodying the former one was at first defeated in the House by a vote of twenty-nine to twenty-four. However, on September 11, this motion providing for seven years only was reconsidered and agreed to. The clause discriminating between salaries of Senators and Representatives was allowed to continue in force until March 1, 1796, and no longer.[1] A compromise had been reached through the efforts of the conference committee.

Two more conferences were held in this session, one on the bill relating to the amendments to the Constitution and the other on a bill to regulate processes in the United States Courts. Agreement was reached in the first matter by the Senate's accepting the amendments of the House to its amendments; in the second by the receding of the House from its amendment to the Senate amendment.[2]

In the second session of the first Congress, a conference on the bill providing means of intercourse between the United States and foreign nations, held in June, 1790, is of considerable interest for two reasons. In proposing an increase from thirty thousand dollars to forty thousand to pay the expenses of ministers to foreign countries, the members of the conference committee were charged, in the House debate on the subject with exceeding their authority. This seems to be the first time that a conference committee had been accused of introducing new matter, but this is a clear case. Both Houses had agreed on the sum of thirty thousand as the amount to be appropriated. The manner of defending the action of the Committee is quite as significant as the action itself. It was urged that the members of the

[1] *Annals*, 1st Cong., 1st Sess., Sept. 11, 1789, p. 924.

[2] *Annals*, 1st Cong., 1st Sess., Sept. 21, 24, 25, 26, 28, 1789, pp. 938, 948, 951, 952, 962.

conference committee had not relied upon their own judgment but had consulted the Secretary of Foreign Affairs and the Secretary had thought that the additional amount was necessary to pay for the ministers required. This argument proved effective and the amendment of the conferees was adopted by the House as it had previously been adopted by the Senate.[1] Although there are not many such instances in the history of Congress, this is not the only one in which the conference has proved to be a stage at which the influence of the President or his cabinet might be exerted.[2]

One conference in the second session failed to effect an agreement between the houses, and the bill over which it was held was lost. This was the Post-Office bill. The matter in disagreement was the amount of power to be given to the Post Master General. Committees of five from each House were chosen for this conference where in most cases three had been considered a large enough number. Senators Johnson, Langdon, Carroll, Strong and Maclay, and Representatives Gerry, Steele, Hartley, Vining and Burke made up the committee. They were unable to reach an agreement on all points in dispute, and as both the Senate and the House adhered in regard to some of the amendments, the bill was lost.[3]

A conference held in July, on the differences in regard to the bill to regulate trade with the Indian tribes, resulted in the passage of the bill when the House receded from its disagreement.[4] A conference requested by the House on the

[1] *Annals*, 1st Cong., 2nd Sess., June 25, 1790, p. 1709.

[2] See *infra*, pp. 173-175.

[3] *Annals*, 1st Cong., 2nd Sess., July 8, 10, 22, 24, 1790, pp. 1734, 1737, 1738, 1743, 1056.

[4] *Annals*, 1st Cong., 1st Sess., July 13, 14, 19, 1790, pp. 1046, 1738, 1739, 1742.

bill for the settlement of accounts between the United States and individual States, resulted in agreement and the passage of the bill when the Senate receded from part of its amendments and the House passed certain amendments proposed by the conference committee.[1]

In the third session—the short session which began December 6, 1790, and ended March 3, 1791—one conference was held. It was on a bill to repeal certain duties on distilled spirits imported from abroad and to lay others in their stead. This conference resulted in agreement and the passage of the bill when the House was induced to recede from its disagreement.[2] There were other matters of disagreement which came up during the last two days of this short session, but they were not referred to conference committees at those late hours.[3] Quite contrary to the later practice, a conference was then apparently not even considered.

The device of the conference committee was employed on a number of occasions in the first Congress, and these first conferences resembled in many ways those of modern times. Perhaps the chief difference between them and the modern conference is that their sole purpose was to bring about agreement between the Houses where there had been disagreement; whereas the conference of modern times has several other purposes, some of them capable of sinister interpretation, some of them undoubtedly constructive.

[1] *Annals*, 1st Cong., 2nd Sess., July 14, 21, 22, 23, 24, 1790, pp. 1047, 1738, 1742, 1055, 1753.

[2] *Annals*, 1st Cong., 3rd Sess., Feb. 23, 25, 26, 1791, pp. 1807, 1814, 2021, 2022, 2023, 2024.

[3] e. g., an act concerning consuls and vice-consuls, over which disagreement developed March 2, 1791 (*Annals*, 1st Cong., 3rd Sess., pp. 1819, 2027, 2030). Also an act making compensation to the Commissioners of Loans for extraordinary expenses, over which disagreement developed March 2, 1791 (*Annals*, 1st Cong., 3rd Sess., pp. 1817, 1819, 1821, 1824, 2028). The first of these was lost. The second was passed when the House receded from its disagreement to the amendment of the Senate.

CHAPTER IV

The Beginnings of the Congressional Conference Committee System

The real power of the Congressional Conference Committee is not suggested by the first conferences. It is true that the essential value of the conference and its necessity in a bicameral system were evidently appreciated from the beginning. Undoubtedly this had much to do with its powers being augmented later on. In the first Congress, conference committees had proved themselves useful in bringing about the necessary agreement between the two Houses. They had sometimes induced one House and sometimes the other to recede from disagreement, that the Government might not be crippled for lack of laws or appropriations. They continued to serve this purpose in succeeding Congresses. Due to this fact, the conference committee came to occupy a position of respect, and gradually custom came to grant it privileges which form the foundations upon which its later power could be built.

The power of the modern conference committee lies in certain distinct understandings and practices which, taken together, constitute the conference committee system. The most important of these are as follows: first, that a conference report must be considered as a whole—it cannot be amended but must either be accepted or rejected, and the acceptance of the report carries with it agreement with all the changes made in the bill by the conferees; second, that the conference report is drawn up in secret and while the committee is in session its members are not required to dis-

close any of their discussions or conclusions; third, that the conference committee may delay reporting until the last hours of the session when there is scarcely time to examine the report, let alone to send it back to the committee if it does not meet the approval of the two houses; fourth, that when it is ready to be presented, the report has the highest privilege of precedence and can displace all other legislation. Add to these the custom of choosing managers by seniority from the committees having the bill in charge, a practice which results in the same men functioning as conferees on nearly all important legislation, and almost all the elements of power seem to be named. There is another factor, however, which enables the conference committee system to extend its power if not to increase it. That is the technique of getting bills to conference, which began to develop toward the middle of the nineteenth century. Under the regular procedure it might take time to bring bills to the conference stage and, if there was a strong faction that distrusted the conference committee, a bill might be kept altogether from going to conference. Therefore methods were evolved to facilitate the process and they came to constitute the final element of power in the system. The evolution of the several practices necessary to the modern conference committee system will now be traced in the order in which they have been enumerated.

First comes the matter of considering the conference report as a whole, either for acceptance or rejection. In the first Congress there was no thought of such a necessity. The suggestions of the conferees were presented by the separate committees of the House or the Senate, sometimes verbally, sometimes in writing, in the words and with the emphasis which each committee thought to be most effective in the body which it served. These sometimes diverse reports were considered and then the two houses proceeded to

act, in form at least, very much as they would have acted if there had been no conference, except, of course, that they had the suggestions of the conferees and had been informed as to the reasons for the position taken by the other house. They adopted some or all of the suggestions of the conferees and then sent to one another messages of recession, insistence, or adherence.

In dealing with these early conference reports the Senate came nearer the modern practice than did the House. The Senate generally adopted the report of the conferees and then proceeded to send messages to the House defining its position on the various amendments and disagreements. In the fourth Congress, in 1796, a motion to modify a conference report was actually ruled out of order in the Senate. The Senate then agreed to the report and afterward modified the bill in accordance with the suggestions embodied in the report.[1] Here is plain evidence of a conception of a conference report as something to be accepted or rejected, not amended; although at this time acceptance of the report did not carry with it any action on the bill.

In these early years the attitude of the House toward conference reports was different from that of the Senate. Once in the eighth Congress a point of order was made against a motion to amend a conference report.[2] After considerable hesitation on the part of the Speaker, who said that he did not know any precedents one way or the other, the point of order was ruled out and the conference report amended. The point seemed quite a new one in the House of Representatives.

During the nineteenth Congress, however, in 1826, when

[1] *Annals*, 4th Cong., 1st Sess., May 24, 1796, p. 104. The Seaman's Relief Bill.

[2] *Annals*, 8th Cong., 1st Sess., Feb. 3, 1804, p. 976. On the bill to give effect to the laws of the United States in Louisiana.

an amendment was offered in the House to the conference report on the bill to carry into effect the treaty with the Creek Indians, the Speaker decided that the report of a committee of conference could not be amended.[1] In agreeing to the report of the conferees, practically the same thing was done in this case as is done now, but the form of doing it has changed. The motion then before the House was that the House recede from its disagreement to the Senate amendment and agree to the same as modified by the conferees. At the present time the conferees embody their recommendations in a report and the question is on agreeing to the report and not on the various parliamentary motions needed to carry into effect the recommendations of the report. It can readily be seen that the modern procedure gives the conference committee much more power. When one vote not only adopts the report of the committee but puts its recommendations into effect, there is less chance of the opposition thwarting the will of the committee than when the vote adopts the report but must be followed by other votes before the bill is passed.

The modern practice of acting on the conference report as a whole began in the House in 1828, but like all such parliamentary innovations, did not at once become invariable. In the case of the differences on the bill for internal improvements, the committee of conference recommended that the House recede from its objection to one of the Senate amendments and that the Senate consent to certain modifications in another of its amendments. The question on which the House voted was this: "Will the House concur in the recommendations in the report of the managers aforesaid?" [2]

[1] *Debates in Congress*, 19th Cong., 1st Sess., p. 2672, May 20, 1826; Hinds, *op. cit.*, vol. v, p. 791, sec. 6535.

[2] *Debates*, 20th Cong., 1st Sess., p. 2674; and *House Journal*, pp. 741, 749; Hinds, *op. cit.*, vol. v, sec. 6472, p. 765.

Apparently when an affirmative vote was given to that question, not only the report but also its recommendations, were adopted. The conference report was not only treated as a whole but the changes it made in the bill were likewise treated as a part of that whole and the report and changes were adopted by one vote. This was in 1828. It was a long time, however, before this became the general practice. The report presented in the Senate on that same bill for internal revenue was in substance the same as the one made to the House, but it was in the form of two resolutions which were voted upon separately. In 1842 a report of a conference committee may be found brought in in the form of separate paragraphs recommending the actions necessary on the part of each house to end the various disagreements. This was a report on the Civil and Diplomatic Appropriation bill made in the House on May 16, 1842, by Millard Fillmore. A question arose as to what method should be used in taking a vote on the report and the Speaker, John White, of Kentucky, finally decided that the question should be taken on each recommendation of the committee separately.[1]

More and more, however, in these years was it coming to be the understanding that a conference report must be voted upon as a whole. In 1846, a conference report of agreement in part only was nevertheless ruled by the Speaker not to be divisible.[2] This is an early instance of a report of agreement in part and disagreement in part. Such reports are very common in later practice.

In 1848 conference reports in the House were not only adopted as a whole, but were adopted under the operation

[1] *Congressional Globe*, 27th Cong., 2nd Sess., p. 505; Hinds, *op. cit.*, vol. v, sec. 6477, p. 766.

[2] *Globe*, 29th Cong., 1st Sess., Aug. 1, p. 1179. Conference report on the Army Appropriation bill.

of the previous question. Furthermore, a motion was made to reconsider the vote of adoption and another to lay that motion to reconsider on the table. This was, of course, in order to make the vote adopting the report final.[1] This very soon became the invariable practice in the House in regard to conference reports.[2] By this time also the conferees were reporting failure to agree in the same manner in which they made any other report. Such a report was sometimes adopted by the house to which it was made, sometimes not.

As late as 1850 a motion was made to amend a conference report,[3] but after considerable discussion the Speaker ruled that the motion was out of order. This seems to be the last time that there was any uncertainty in regard to this point. On March 17, 1852, in answer to a parliamentary inquiry, Speaker Linn Boyd of Kentucky ruled definitely that a conference report was an entirety and must be agreed to or disagreed to as a whole.[4] In this year also the President of the Senate ruled that it was not in order for a Senator to move to accept a portion of a report of a conference committee, and that the report was to be voted upon as a whole. In answer to Senator Underwood, who cited a case of agreement to part of a report, the President said

[1] See vote on the conference report on the Indian Appropriation bill, *Globe*, 30th Cong., 1st Sess., p. 995, July 25, 1848; also reports on the Naval Appropriation bill, July 31, p. 1012, and the Civil and Diplomatic Appropriation bill, August 12, 1848, p. 1070.

[2] On one occasion in 1850 after the presentation of a conference report during a stormy session very near the day of adjournment Representative Phelps made the inquiry, presumably with ironical intent, whether the previous question was also a part of the report. See *Globe*, 31st Cong., 1st Sess., Sept. 28, 1850, p. 2027. There was no reply.

[3] On the Civil and Diplomatic Appropriation bill, *Globe*, 31st Cong., 1st Sess., Sept. 28, 1850, p. 2030.

[4] *Globe*, 32nd Cong., 1st Sess., p. 777; Hinds, vol. v, sec. 6530, p. 790. Discussion was on the conference report on the bill to make land warrants assignable.

that, if such an action had ever been taken, it was informal, incorrect and unparliamentary.[1] Since that time there have been occasions when conference reports have been amended by concurrent action of the two houses.[2] This, however, is an entirely different mode of procedure from the old manner of amending them and it has been used rarely and mainly for the purpose of correcting clerical errors. Since the decisions of 1852 conference reports have been treated in both houses as indivisible, unamendable, and capable only of acceptance or rejection. Not until 1880 was there a rule in either House to define this privilege.

The first conference held in the first Congress was open to members of either house.[3] In all the early conferences there seems to have been little concern as to whether or not the cogitations of the managers should be made public. The discussion in one of the debates in the House in 1837, however, shows a change in attitude toward this matter. The conference committee on the differences on the Fortification bill had reported disagreement and Representative Bell, who made the report, moved that the House adhere. It was March third, the last day before the close of the session, and a heated debate followed. Mr. Cambreling, of New York, from the conference committee, and also chairman of the Committee on Ways and Means, warned the House that if it adhered the bill would be lost. He was interrupted by loud and angry crys of "Order!" and was asked how he knew what he had said to be true. On his reply that he had this assurance from the conference committee on the part of

[1] *Globe*, 32nd Cong., 1st Sess., Aug. 31, 1852, p. 2487. Discussion was on the conference report on the Naval Appropriation bill.

[2] For instance, in 1855 the conference report on the bill providing for the payment of the Texas debt was amended by concurrent action of the two houses. *Globe*, 33rd Cong., 2nd Sess., Feb. 23, 1855, pp. 902, 903, Hinds, vol. v, sec. 6536, p. 791.

[3] See *supra*, p. 42.

the Senate, he was roundly scored for implying that the committee could speak for the whole Senate. Here John Quincy Adams rose to make the parliamentary inquiry as to whether Mr. Cambreling was in order in referring to what had taken place before the committee of conference. Not receiving any answer he repeated the question, but there is no record of any reply.[1]

Another such instance is recorded in 1846. A partial report was brought in by the conference committee on the Army Appropriation bill. Representative Ashmun, a member of the conference committee, made the statement that the report was not the report of the whole number of the conferees but only of the majority. Mr. Dromgoole maintained that this statement was not in order, but again the Speaker did not rule.[2]

This guarding of the secrecy of the conference deliberations was brought out in a most extreme form in 1853. Senator Hunter, chairman of the Senate conference committee, had announced a failure of the committee to agree. When asked what were the points of difference between the House and Senate committees on the bill, he said that he supposed it would not be proper to report what had passed in the conference. As a concession he gave his individual opinion that if the Senate should recede from a certain amendment there would be agreement in regard to the whole bill.[3] When Representative Houston presented this report in the House he said that he could not discuss the proposition contained therein even if he had the time. The committee had done the best it could and the House must trust to its committee.[4] On this same day, March 3, 1853,

[1] *Globe*, 24th Cong., 2nd Sess., March 3, 1837, p. 220.

[2] *Globe*, 29th Cong., 1st Sess., Aug. 1, 1846, p. 1179.

[3] See *Globe*, 32nd Cong., 2nd Sess., March 3, 1853, pp. 1095, 1107.

[4] *Globe*, 32nd Cong., 2nd Sess., March 3, 1853, p. 1140.

Senator Gwin made a report, again one of inability to agree, from the committee of conference on the Naval Appropriation bill, and when asked to state the points of difference between the two committees, said that he did not feel authorized to do so.[1]

It is true that these reports were all of inability to agree, nevertheless it seems rather unreasonable that the bodies with whom lies the final action in respect to a bill, the Senate and the House, should not be informed as to what differences these committees had found in their joint sessions. The assumption had come to be that the conferees were diplomatic agents of the two houses and must be surrounded with the traditional secrecy attending diplomacy. In a sense the assumption was justified at this time, for fundamental differences were growing between the two houses. Diplomacy was doubtless needed in many instances in order to pass necessary legislation.

In the early Congresses no conferences were held during the last days of the session. These Congresses were not overburdened, work did not accumulate as it did later, and the new federal government was giving the country what it wanted—just as little legislation as possible. As the country grew, however, and the federal government became more securely established, this condition necessarily changed. Each session became more congested, especially toward its end. In the seventeenth congress an effort was made to control certain evils which arose from this state of affairs. Bills, even appropriation bills, were brought to the Senate on the day before or even on the last day of the session. A joint committee from the Senate and the House worked out a change of rules which, among other things, provided that no bill should be sent from either House to the other on any one of the last three days of the session. This rule was concurred in readily by the Senate which seems to have been

[1] *Globe*, 32nd Cong., 2nd Sess., March 3, 1853, p. 1110.

the greater sufferer by the former practice. After considerable adverse talk the House also agreed to the new rule.[1] But congestion grew steadily worse as the volume of legislative business increased. In the twenty-first Congress the joint rule adopted in the seventeenth, was, with regard to some particular bills or classes of bills, suspended by concurrent resolution at the end of the session.[2] Daniel Webster protested vigorously against the House practice of sending bills back to the Senate just before adjournment,[3] but his protests had little effect. The practice was allowed to continue, and the joint rules designed to control congestion at the end of the session were suspended every year.

Although from the time of the fifth Congress occasional instances may be found in which conference reports were presented as late as March 3 in the short session, the practice did not become general during the first half-century of congressional history. In 1852 several conference reports were brought in so late that the appeal could be made that they must be agreed to at once, for the committee on enrolled bills had informed the chairman of the conference committee that otherwise the work of enrolling could not be done before the end of the session.[4]

[1] *Annals*, 17th Cong., 1st Sess., Jan. 30, 1822, p. 832.

[2] e. g., on Aug. 31, 1852, the two houses agreed to suspend this joint rule, the seventeenth one, as it might relate to all bills passed by both houses before ten-thirty A. M. of that day. See *Globe*, 32nd Cong., 1st Sess., Aug. 31, 1852, p. 2488. The joint rules were allowed to lapse in 1876. See *infra*, p. 100.

[3] In 1837, the House sent the Florida bill back to the Senate at a late hour of the night before the closing day. Webster said it had been sent to the House a fortnight before and should have been back before this. Others agreed with Webster that the principle was wrong but they so much wanted the Florida bill to pass that they were willing to overlook the fact of the lateness of the hour. Webster gave notice that he would oppose all such proceedings in the next session if he should then be present. See *Globe*, 25th Cong., 1st Sess., Oct. 14, 1837, p. 139.

[4] e. g., see the conference report presented by Senator Hunter on the

In a debate on a conference report presented in the Senate on the last day of the session in the following year, March 3, 1853, Senator Rusk gave some account of the general procedure in regard to appropriation bills which had been followed in the two sessions of that thirty-second Congress. In the last session, he said, the Senate had been forced to act upon the appropriation bills in the final days of a long session. The Senate had investigated these bills and amended them. When these amendments had come back to the House of Representatives that body had rejected them *en masse* and asked for conferences. To the conference committees appointed, in consequence of the want of time to act upon the amendments, had virtually been delegated the power of legislating upon some of the most essential matters connected with the administration of the government. Those two committees, and not the two houses of Congress, had made the laws.[1]

The particular bill under discussion at this time was the Civil and Diplomatic Appropriation bill. Senator Rusk said that it came to the Senate on the twenty-first of February, thus allowing the Senate only ten days for its share in that important measure, to say nothing of the other appropriation bills that were to come after it. As soon as it was received in the Senate it was referred to the proper committee, which reported it out in two days time. The Senate had proceeded to as much investigation as was possible in

Civil and Diplomatic Appropriation Bill, the day before adjournment, *Globe*, 32nd Cong., 1st Sess., August 30, 1852, p. 2448. When this report was brought into the House on that same day, Representative Benjamin Stanton of Ohio suggested that adjournment be postponed rather than that the vote be taken unintelligently, but he was interrupted with cries of, "Order, order!", all over the House. Nevertheless, he and some others, although against much opposition, did succeed in having the report read, pp. 2472-7.

[1] See *Globe*, 32nd Cong., 2nd Sess., March 3, 1853, p. 1095.

the limited time available and had made over a hundred amendments to the bill. The House of Representatives had rejected seventy or eighty of those amendments and asked for a committee of conference on them. That had been granted by the Senate. Then the Senate committee, so Senator Rusk had been given to understand by one of its members, had agreed to eliminate appropriations important to the great interests of the country and necessary for carrying on the Government. The Senate, with a commendable spirit, without any stubbornness, had agreed to the conference report but the House had rejected it. Then, at a late hour, nearly twelve o'clock at night, on March 3, the House had asked for a new committee of conference. The report of this committee the House would have no time to examine. The effect, said Senator Rusk, would be to allow that committee to make laws for which both the Senate and the House of Representatives would be responsible.[1]

Although this account is given from the point of view of the Senate and contains a certain bias, still the procedure is plainly described. The substance of Senator Rusk's statement in regard to the power of the conference committee will be found to be repeated on many occasions from that day to this.

In the early Congresses conference reports were not given high privilege. Before the calendars became crowded there was no particular reason why they should have precedence over other legislation. But as legislation grew in volume and the conference in importance as a means of reaching agreement between a Senate and a House whose funda-

[1] See *Globe*, 32nd Cong., 2nd Sess., March 3, 1853, p. 1095. In this case the House would not agree to the second committee of conference and, in the closing hours of the session, the rules were suspended in the House and the report of the first conference committee adopted. Hinds, vol. v, sec. 6320, p. 673; *Globe*, pp. 1156, 1157; *House Journal*, 32nd Cong., 2nd Sess., pp. 393, 404, 407, 409, 430.

mental differences were becoming pronounced, custom came to grant the conference report precedence over most other legislation. Before there were definite rulings to this effect, precedence could be had only by unanimous consent. In 1850 there was in the House a temporary rule, for the session only, permitting conference committees and the Committee on Ways and Means to report at any time.[1] This rule was not made a permanent one. It was not necessary that it should be, because a generally accepted ruling by Speaker Boyd in the next Congress practically established the privileged character of conference reports. On March 17, 1852, an objection had been made to the presentation of the report of the conference committee on the bill to make land warrants assignable. Mr. Jones of Tennessee declared that he remembered no case where a conference report had been ruled out by an objection and argued that, as it was the business nearest to perfection, it should not be so excluded. He appealed to the Chair, who ruled as follows: The Chair did not remember any instance where objection was made to the introduction of the report of a conference committee, but there was no rule giving it preference over the report of any other committee. Since he was of the opinion that the practice had been that way, the Chair was strongly inclined to decide that it would be in order for the committee of conference to report at any time. This was taken as a favorable ruling, objection was withdrawn, and thereupon Mr. Jones presented his report.[2] This ruling has also been taken as a definite one to apply to later cases where the privilege of conference reports has been questioned.

From the first session of the first Congress it was the practice of the Senate to choose managers for conferences

[1] *Globe*, 31st Cong., 1st Sess., Sept. 21, 1850, p. 1899; Hinds, vol. v, sec. 6443, p. 752.

[2] *Globe*, 32nd Cong., 1st Sess., p. 776; Hinds, vol. v, sec. 6445, p. 752.

from a comparatively small group of Senators. The names of the men in this group appear over and over again on the lists of conferees. For example, the name of Senator Ellsworth is on almost every conference held during the first three Congresses. In the fifth and seventh Congresses there was scarcely a conference upon which Senator Tracy did not serve. In the seventh and eighth the names of Jackson and Bradley appear on more than half the Senate conference committees. In the eighteenth Senator Tazewell's name appears oftener than any other, in the twenty-first that of Daniel Webster. In 1850 Thomas J. Bayly was many times chairman of conference committees representing the House and Senator Hunter was prominent as a Senate manager. It was not till later, however, that there came to be a set practice governing the choice of managers. A study of the standing committees in the Senate and the House in the early Congresses, made in connection with a study of the members of conference committees, shows that in many cases the managers chosen did not even belong to the committees that had reported the bill in either house.[1]

By the time of the first session of the thirtieth Congress, in 1848, the personnel of the committee reporting the bill seems to have some influence on the choice of managers in the House. The managers of the conference on the Civil and Diplomatic appropriation bill, Samuel F. Vinton of Ohio, James J. McKay of North Carolina, and Charles Hudson of Massachusetts, were all members of the Committee on Ways and Means, Vinton being the Chairman. There were other cases in which the chairman of the committee reporting the bill was also chairman of the conference

[1] Lists of standing committees may be found in the *Congressional Directory*. Lists of managers of conferences in the early Congresses can be had only by searching the *Journals* of the two houses or the various published records, as the *Annals of Congress, Debates of Congress, Congressional Globe* and *Congressional Record.*

committee on the part of the House. For example, John W. Farrelley of Pennsylvania was the Chairman of the Committee on Patents and also chairman of the conference committee on the bill providing for patent examiners, and Joseph R. Ingersoll of Pennsylvania was chairman of the Committee on the Judiciary and also chairman of the committee of conference on the Virginia Courts bill. Still, even this much deference to seniority or place on standing committees was not by any means the general practice in the House, and in the Senate in this session there is no evidence of it at all. In the second session of this thirtieth Congress, however, in 1849, the Senate committee of conference to whom were committed the differences on the Army appropriation bill, Davis of Mississippi, Badger and Rusk, were all members of the Senate Committee on Military Affairs. Still, they were not chosen for the conference according to rank on the Military Affairs Committee.

In the first session of the thirty-first Congress, in 1850, the Chairman of the Senate Committee on Finance, D. S. Dickinson, was chairman of the conference committee on the Deficiency appropriation bill, and chairman of three conferences on the Civil and Diplomatic appropriation bill, and Jefferson Davis of Mississippi, who was Chairman of the Committee on Military Affairs, was chairman of the conference committees on the Army appropriation bill and the Military Academy bill. In the House the managers of the first conference on the Civil and Diplomatic appropriation bill, Thomas J. Bayly of Virginia, Chairman, Samuel F. Vinton of Ohio, and George W. Jones of Tennessee, were all members of the Committee on Ways and Means. For the second and third conferences on this bill the conferees were changed each time. In the next session, in 1851, the members of the first conference were again appointed, and with Senator R. M. T. Hunter, the new Chairman of the

Senate Committee on Finance, as chairman of the Senate conference committee, an agreement was finally reached on the Civil and Diplomatic appropriation bill. In the thirty-second Congress in 1852 and 1853, in the Senate the chairman of the committee of conference generally belonged to the committee reporting the bill and often he was the chairman of that committee.

In the early fifties, the same men served on many committees of conference and there was a tendency to appoint as chairmen of such committees men holding high place on the standing committees which had reported the bills. This tendency developed later into the practice of choosing managers entirely by seniority in respect to majority and minority divisions of the committee having the bill in charge. This practice will be described in a later chapter.[1]

In the foregoing pages the development of most of the elements of power of the conference committee system has been traced. There remains that of the technique of getting bills to conference. There were great advantages in getting bills to the conference stage and these became apparent as the power of the conference committee grew. One method after another was tried in the attempt to shorten the procedure by which the conference stage could be reached. The following illustrations will give some idea of the success of these attempts.

In 1846 there was evidently an effort made to send the Oregon treaty bill to conference as soon as possible, but this effort did not meet with success in hastening the process. When the bill returned from the Senate with amendments a motion was made in the House that a conference be asked on the disagreeing votes and that the managers be appointed. If this motion had been carried it would have eliminated the

[1] See chapter vii, on choosing the Senate managers for the conference on the Muscle Shoals bill, 1925, *infra*, pp. 158-162.

procedure of referring the bill to a standing committee and reporting it from that committee. However, another motion was made to insist and a further one to recede. The Speaker decided that the last motion was the first in order, and he ruled further that it was necessary that the House vote on a motion to insist, recede, or adhere before asking for a committee of conference. Such had been the uniform practice, he said, during the two preceding Congresses. When an appeal was taken, this decision was sustained by the House.[1]

If success did not attend this effort, it did follow another one in 1850. The Census bill of that year, sent back from the Senate with amendments, had been committed to the committee on the judiciary. It is plain to see why a bill which was to provide for taking the Census of 1850 and was still in the hands of a committee on May 15 of that year, needed to be hastened. On May 15, Mr. Meade moved that the vote whereby it had been sent to the committee on the judiciary should be reconsidered and a committee of conference asked and appointed. He said that there should be no more delay and that most of the members of the committee on the judiciary were out of town. The Speaker said it was usual for the House to act on amendments before the appointment of a committee of conference but by unanimous consent the House might proceed in the way suggested by Mr. Meade. The vote to commit the bill to the judiciary committee was then reconsidered and a motion was made and put to insist on disagreement with the Senate amendments and to ask a conference with the Senate. A division of the House was called for and Representatives Vinton, Stevens and Thompson all argued for House or Committee action before asking a conference. However, yielding to the plea of Mr. Meade that it was very essential

[1] *Globe*, 29th Cong., 1st Sess., p. 701; Hinds, vol. v, sec. 6270, pp. 647, 648.

that the bill should pass that week in order that the necessary forms for taking the Census might be printed, the Senate amendments were read and voted upon and a committee appointed.[1]

In the instance just cited, the gain was in sending a bill to conference before a House committee had acted upon the amendments of the Senate. Later in this year, when objection was made to sending the Bounty Land bill to conference in this way, it was done, nevertheless, by a motion to suspend the rules. The motion was carried by the required two-thirds vote of the House, and the conference asked.[2]

The process of getting the Civil and Diplomatic bill to conference in 1851 is extremely interesting in the light of the later practice. When the message from the Senate announcing the passage of the bill with amendments was received in the House, Mr. Bayly rose and said that he and his colleague, Vinton, of the Ways and Means Committee, had been in the Senate and heard the amendments to the bill, and with a view to saving time he would move that the House reject all of them and ask for a committee of conference. This proposal was greeted by enthusiastic cries of "Agreed! Agreed! Agreed!" from all parts of the House. Mr. McLane of Maryland asked rather significantly how the House could know whether or not the committee of conference would report the Senate amendments to the House. Mr. Bayly assured him that the committee would be obliged to report them. An objection was made by Mr. Fitch to the proposition to send the bill directly to conference and in order to carry the plan through it was necessary to suspend the rules. Before that could be done several motions and

[1] *Globe*, 31st Cong., 1st Sess., May 15, 1850, p. 1013.

[2] See *Globe*, 31st Cong., 1st Sess., Sept. 28, 1850, p. 2020. For the history of the rule requiring a two-thirds vote to suspend the rules, see *House Manual*, sec. 879.

counter motions were made, and a vote failed to disclose a quorum although a quorum was actually present.[1] However, Speaker Cobb was able to secure a quorum by requesting that the gentlemen vote. Finally the rules were suspended and Mr. Bayly moved that the House non-concur in the amendments of the Senate and ask a conference. The motion was carried.[2]

On the same day, March 3, 1851, the Army appropriation bill came from the Senate with amendments and Mr. Bayly moved that the House disagree to the Senate amendments and request a conference. He asked this in the interest of saving time. Representative Wentworth of Illinois insisted that the amendments be read, and Johnson of Arkansas asked if it would be in order to concur in the amendments. At this Bayly said that he would now adhere to his original purpose and move to suspend the rules in order that the House might disagree to the Senate amendments and request a conference. He did so and his motion was carried as in the case of the Civil and Diplomatic bill.[3]

At nine A. M. on March 4, Mr. Thompson reported in the House from the committee of conference on the Army appropriation bill. The report was printed and signed by all the conferees. Following the signatures were given the amendments of the Senate which the House in this case had never considered or even seen. But the House concurred in the report of the committee of conference.[4]

[1] This was a method of obstruction often used in the House before 1890. Members not voting were not counted present. In 1890 Speaker Reed directed the clerk to enter on the *Journal* as part of the record of a yea-and-nay vote names of members present but not voting, thereby establishing a quorum of record. See *House Manual*, sec. 54.

[2] *Globe*, 31st Cong., 2nd Sess., March 3, 1851, p. 788.

[3] *Globe*, 31st Cong., 2nd Sess., March 3, 1851, p. 788.

[4] *Globe*, 31st Cong., 2nd Sess., March 4, 1851, pp. 788, 789.

After this Mr. Bayly reported from the conference on the Civil and Diplomatic appropriation bill. This report was also printed and signed by all but Mr. Jones. The amendments of the Senate followed the signatures and these amendments filled three columns of the *Globe*. Mr. Bayly explained that nearly every one of the Senate amendments was to carry out some law which had been passed since the bill left the House. Representative Fitch of Indiana, who had objected to the action taken the day before, now requested the privilege of asking a question of the Chairman of the Committee. His question was in regard to the mileage provision of the bill, which he contended had been "juggled" with by the conferees. He had other objections to the report also. He called the whole process connected with the conference a piece of legislative tyranny—an attempt on the part of the Committee on Ways and Means to coerce the House into the adoption of a measure the details of which they would not explain or permit the House to examine. His efforts were of no avail whatever. The amendments were not read, as of course they could not be if there was to be time to pass the bill, and the House blindly concurred in the report.[1]

Both the Army Appropriation bill and the Diplomatic Appropriation bill went to conference on the next to the last day of the short session and both of them went with Senate amendments which the House had never seen. In each case the conference report was adopted by both Houses and the bill passed.

Enough illustrations have been given to show that the conference committee had developed much power by the middle of the nineteenth century. The last illustration given shows also that it was not without opposition that the conference committee exercised this power. This opposition

[1] *Globe*, 31st Cong., 2nd Sess., March 4, 1851, pp. 789-791.

had been expressed not only by bitter speeches and parliamentary maneuvres, but also in other ways. So well had the evils and dangers of unrestricted power of the conference committee been recognized that along with the evolution of that power had evolved a system of checks upon the managers.

One of these checks was a custom of requiring that conference reports be printed and signed by the conferees before they were presented. Another custom made it necessary for the report to lie over a day before it was taken up. The printing and signing of the report placed some measure of responsibility upon the individual managers; the letting it lie over a day gave some time and opportunity for an examination of the report by the members of the House before they voted upon it. The first of these customs had become quite general by 1850, but the second was during the fifties, perhaps more honored in the breach than in the observance.

Another means of checking the power of the conference committee had been used perhaps only once or twice during the history of Congress up to that time. This was the point of order against a report containing new matter not referred to the conferees. In modern times this point of order has been developed into quite a powerful weapon when used with skill.

Just when the customs of printing conference reports and allowing them to lie over a day began, is not certain. In the tenth Congress, in 1809, when a conference report on the bill to authorize the appointment of an additional number of Navy officers was read in the Senate, it was ordered printed and also ordered to lie over for consideration before being taken up in the House.[1] Up to a much later time, however, conference reports were not printed in full in the

[1] *Annals*, 10th Cong., 2nd Sess., Jan. 19, 1809, p. 328.

Journals.[1] But since 1846 not only do they generally appear in the *Journals*, but the signatures of the conferees are generally attached to them.[2] Such means of placing responsibility as the conference committee system could afford were beginning to be employed.

As has been said before, there had been before 1850 the rarest instances in which a point of order had been offered against a conference report because it contained new matter. The first of these occurred in the House in the twelfth Congress. A conference report on the bill for the better organization of the infantry was declared out of order by the Speaker, Henry Clay, because the conferees had discussed and proposed amendments which had not been committed to them by either House.[3]

Another instance occurred in 1834 when John Quincy Adams made a point of order against a conference report on an appropriation bill. A newspaper of the day [4] referred to

[1] In 1842 a conference was held on the bill relating to the organization of the Army. On August 8 the report was made, on August 9 it was disagreed to and on neither occasion was it printed in the *Journals*. On August 16 a report was made that was agreed to and this appeared in full in the *Journals*. *Senate Journal*, 27th Cong., 2nd Sess., pp. 583, 584; *House Journal*, 27th Cong., 2nd Sess., pp. 1299-1301; Hinds, vol. v, sec. 6478, p. 767.

[2] See Hinds, vol. v, sec. 6481, p. 767. The conference report on the Joint Resolution of notice to Great Britain to annul and abrogate the treaty relative to the Oregon Country is one of the first instances, if not the very first one, of a conference report signed by the conferees, or at least printed with their signatures attached in the *Journal* of the House and in the *Globe*, 29th Cong., 1st Sess.; *House Journal*, pp. 706, 707; *Globe*, p. 716. There are two other such instances in this year, one on June 11, *House Journal*, p. 941, and the other on June 16, *House Journal*, p. 973; *Globe*, pp. 984, 985. In this report the third conferees in both committees do not sign and it is evident that they dissent from the report.

[3] *Annals*, 12th Cong., 1st Sess., June 23, 1812, p. 1532.

[4] The New York *Gazette*, Feb. 10, 1834.

this occasion as a desultory discussion, in which Messrs. J. Q. Adams, Wayne, Hardin, Miller and Everett participated, upon a point of order of no interest outside of the House. This point of order seemed important, however, to John Quincy Adams. The bill in question was one to provide for the contingent expenses of the Senate and the House of Representatives. One clause providing for the cost of books used by the members of Congress had seemed to discriminate in favor of the members of the House. The Senate had objected to this and had struck it out. The conference committee, instead of attempting to improve the clause, had provided for books in another way by making an annual appropriation for the Library of Congress. The principle of this action Adams assailed as quite untenable. He said the committee of conference had in fact given to both houses not only a new bill, but a bill of a different character from that upon which it had been grafted. A permanent annual appropriation had been patched upon a mere bill for the immediate payment of the expenses of the members of the two houses of Congress at the present session. There had not been a syllable about the Library of Congress in the original bill; but here the committee had reported a permanent law applying five thousand dollars annually to the library. He had no objection in the world to the compromise in itself; he was satisfied with the provisions of it, especially with an augmentation of the sum to be applied to the library; but as a precedent he could not assent to it. The Chair said that if the report touched any other subject in the bill than that on which the houses disagreed, it would, of course, be out of order.

Mr. Everett then explained that there was a connection between the library appropriation and the lines on the subject of books for members struck out by the Senate. He considered that since the disagreement related only to the

purchase of books for the use of the members of the two houses, any arrangement on that subject was within the power and competence of the committee. Mr. Adams was not convinced, but was precluded from making a point of order by the statement of Speaker Stevenson that he considered it for the House and not the Speaker to decide whether the conference report was in order or not.[1] The question was then put on agreeing to the report of the conferees and decided in the negative. The report was therefore rejected.[2]

By the adverse vote of the House on the bill John Quincy Adams gained his point in one sense although he failed to establish the precedent of having made a point of order against a conference report containing new matter, and this had evidently been his purpose. It is doubtful whether his purpose was understood in 1834. Whether or not it was, his whole effort was forgotten and it was many years before any such attempt was again made. Eventually this point of order became the accepted method of opposing conference reports, but in the fifties it was not used or understood.

It is impossible to say just exactly when or how the customs which comprise the Congressional Conference Committee System did originate, but in a crude form most of them are to be found in the records of legislation of the middle of the nineteenth century. For some years antagonism between the two Houses had been increasing on certain questions. The conference committee was being used more and more in a desperate effort to bring the Senate and the House together on the essentials of government. The leaders learned that there might be more chance of agreement if the details of legislation were left to a small group

[1] *Debates*, 23rd Cong., 1st Sess., 1834, pp. 2543-2544.

[2] Hinds, vol. v, sec. 6416, p. 724.

from each House, who, in various ways, might be induced to agree. If this small group reported on a bill during the crowded days at the close of the session, especially at the close of the short session when it was impossible to postpone adjournment, the chances were favorable to the adoption of the report without too careful examination by either House. Perhaps the reason why the leaders had learned the possibility of thus using a small group to solve the problem of carrying through necessary legislation was that they had always had the conference committee with which to work. They now adapted this old piece of legislative machinery to meet the needs of the time. The adoption of a report of agreement by the conference committee had not in early congressional history carried with it the passing of the bill in question. By 1850 the passing of the bill was implied in the adoption of the report of agreement. The report, furthermore, had become highly privileged and was given precedence over all other legislation. The Congressional Conference Committee System was in existence by 1850 and its power was beginning to be felt.

CHAPTER V

Further Development of the Conference Committee

The period of development surveyed in this chapter is that of the years from 1853 to 1883. By 1853 the essential parts of the Conference Committee System had been evolved and roughly coördinated. In the thirty years that followed, this system was further improved but there were in it few startling innovations. In 1883, however, the tariff conference marks the beginning of a new period in the history of the conference committee system and the end of an earlier development. This is the explanation for the apparently arbitrary setting-off of the period of thirty years from 1853 to 1883.

One new practice introduced in these years was that of amending by substitute. When this is done one House strikes out all of a bill from the other House except the enacting clause and substitutes a bill of its own. When the two bills go to conference the managers are given great latitude as to what they may include in their report. With this development "new matter" came to be interpreted as matter not germane to the subject of the legislation.

Amending bills by substitute was the only important new practice during this period in connection with the working of the conference committee system. But those practices already in use were improved. The process of getting bills to conference became greatly simplified and methods which would have been discountenanced in the forties were taken as a matter of course in the seventies and eighties. The

privileged character of conference reports, sustained by important rulings, became thoroughly established and it became definitely understood that it was not in order to move to lay a conference report on the table. For years at a time during this period the same party was in power in both Senate and House of Representatives and the same party leaders, serving repeatedly on conference committees in the two Houses, acquired a great deal of skill in managing the system.

However, a consciousness of the evils inherent in the system also increased. Comment and criticism became freer and more specific and the machinery of control was improved following improvement in the machinery of operation. The printing and signing of reports came to be taken for granted, and it came to be the custom to require with the conference report some statement explaining its effect. The House of Representatives formed the practice of instructing its conferees on many points and it became possible to make a point of order against a conference report into which the managers had introduced matter foreign to the subjects committed to them. In a few cases, also, conference reports were recommitted to the committee of conference. On the whole, however, these checks were not very effective, although in the long run it proved important that they had been developed.

Except for the first joint rule passed in the first Congress, providing for conferences between the two Houses, the Conference Committee System had grown up without particular, definite rules governing it in either House. The general parliamentary law held some rules touching conferences,[1]

[1] These rules, which are part of the general parliamentary law, constitute section xlvi, of Jefferson's *Manual of Parliamentary Practice* (included in every House or Senate *Manual*). Jefferson based the rules he wrote down almost entirely on the practices he found in Hatsel's and Grey's Debates. These practices are taken, of course, from the English

the presiding officers had made some important rulings,[1] and there were some joint rules that had been passed by the two Houses. These were of a general character and they were allowed to lapse in 1876.[2] In 1880 the House adopted a definite rule safeguarding the priority privilege of conference reports and added to it a section requiring that a detailed, explanatory statement accompany every conference report. In this rule, which is House Rule XXVIII,[3] is found crystallized an important part of the machinery alike of operation and control of the Conference Committee System.

An early example of amendment by substitute is furnished in the Washington and Georgetown Railway bill of 1862. This bill originated in the Senate. It was amended in the House by striking out all after the enacting clause and substituting an entirely different bill. In the conference which followed, a compromise bill was drawn up which must unquestionably have been an improvement upon either the Senate bill or the House substitute. As it was explained in

Parliament, and some of them are not applicable to the American Congress. The rules relating to conferences deal with (1), the occasion for asking conferences; (2), which House makes the request for a conference; (3), the distinctions between simple and free conferences; (4), the recording of reports from conference committees; (5), where the papers [that is, the bill and amendments] should be when the conference is asked and when the report is made; (6), the possibility of holding a conference after one House has adhered; (7), the requirement that the subject of a conference be announced when the conference is requested. In 1837 the House by a rule which still stands as House Rule xliii, (House *Manual*, sec. 913, p. 423), provided that the "rules of parliamentary practice comprised in Jefferson's *Manual* shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House."

[1] *Supra*, chapter iv.

[2] *Infra*, p. 100.

[3] *Infra*, p. 101.

the House by Thaddeus Stevens and in the Senate by Senator Morrill, it seems that the original bill provided for a large number of incorporators and that the House bill increased this number and included among their names those of residents of nearly all the States in the Union. As the Washington and Georgetown Railway was properly a matter of concern only to the District of Columbia, the committee of conference came to the conclusion that there was an ulterior purpose in choosing incorporators from all over the United States. They struck out both Senate and House lists and substituted the names of seven men whom they selected because they were reliable men and were all residents of the District of Columbia. In the House both Thaddeus Stevens and Schuyler Colfax made a plea to adopt the conference report before the many lobbyists at the capital should have time to influence the vote so that the bill would be lost.[1] Roscoe Conkling, at that time a member of the House of Representatives, criticized the managers, saying that each of them had had the privilege of appointing one of the corporators and that therefore they had no sympathy with the other members of the House or Senate who had lost that opportunity. Conkling was a member of the House committee which had had the bill in charge before it went back to the Senate, but he was not a member of the committee of conference. Even if this conference report did not please all the members, it was adopted by both the Senate and the House and thus was made possible the construction of this railway line which had long been needed and desired by all—residents of the District and members of Congress alike.

In July of this same year, 1862, a conference report on the Confiscation bill which contained new matter was challenged in both Senate and House with no success in either

[1] *Globe*, 37th Cong., 2nd Sess., May 13, 1862, p. 2110 and May 15, p. 2141.

body. The President *pro tempore* of the Senate, Solomon Foot, said the case presented no point of order for the Chair to decide. The whole Senate bill was in the nature of a substitute for the House bill and therefore the whole subject was placed within the jurisdiction of the conference committee.[1] In the House, Mr. Samuel G. Cox, of Ohio, made the point of order that the question between the two houses was as to the adoption of the bill or the substitute and that therefore the conference committee could properly report only the bill or the substitute. Speaker Grow overruled a point of order made by Mr. Mallory, of Kentucky, that the report contained new matter and a similar one made by Mr. Cox. When Mr. Cox appealed from this decision, the appeal was laid on the table.[2]

In 1865 Speaker Colfax made a definite ruling on the question of the latitude to be allowed the managers when they were given two different bills by the two houses. The Senate had amended the House bill providing for the Freedman's Bureau by substituting a bill of its own, and the conference committee had substituted a third bill. A point of order was made by Mr. William S. Holman, of Indiana, that the report did not come within the scope of the conference committee, that it did not report the proceedings of the Senate or an agreement by the committee on an amendment to the Senate's amendment to the House bill, but that it reported an entire substitute for both the original bill and the substitute adopted by the Senate, and it established a department unprovided for by either of the other bills.

Speaker Colfax ruled that if the two Houses had agreed upon any particular language or any part of a section, the committee of conference could not change that, but since the

[1] *Globe*, 37th Cong., 2nd Sess., July 12, 1862, p. 3275.

[2] *Globe*, 37th Cong., 2nd Sess., July 11, 1862, p. 3267; Hinds, *op. cit.*, vol. v, sec. 6467, p. 763.

Senate had struck out the bill of the House and inserted another one, the committee of conference had the right to strike out that and report a substitute in its stead. Two separate bills had been referred to the committee and they could take either one of them or a new bill entirely, or a bill embracing parts of either. They had a right, in fact, to report any bill that was germane to the bills before them. This decision of Speaker Colfax was sustained by a large majority of the House, the vote being eighty-nine to thirty-five.[1]

Here was stated the doctrine of germaneness as it was to be applied to new matter in conference reports during the half-century to come. But attention should be called to the fact that Speaker Colfax said " matter germane to the bills." Sometimes a different construction was put upon the term and anything germane to the subject of the bills was considered in order. It can be seen that this construction might widen the powers of the conference committee materially. In fact, under this interpretation of germaneness, when a bill and a substitute for it were turned over to a committee of conference, there was really no restriction on the right of the managers to legislate except that they must keep to the general subject of legislation.[2]

The process of getting important bills to conference expeditiously during these years, from 1853 to 1883, often involved the suspension of the rules of the House. The problem was generally to send the bill to conference immediately after it came back from the Senate with the Senate amendments. That it was not the other way around was due to the fact that the great mass of bills originated in the House of Representatives, certainly the greater number of impor-

[1] *Globe*, 38th Cong., 2nd. Sess., p. 1402; Hinds, vol. v, sec. 6421, p. 729.

[2] In chapter viii, *infra*, there is a discussion of germaneness in the debate on the conference report on the Muscle Shoals bill in 1925.

tant bills, including all providing for revenue and appropriations. This is as true today as it was then. Bills are passed by the House and sent to the Senate where they are amended, oftentimes drastically, and then sent back. At this point the machinery of the conference committee system can begin to work in the House. The House may send the bill with the Senate amendments attached directly to conference without first allowing the House or any committee of it to consider the amendments. During the period under discussion from 1853 to 1883, the rules nearly always had to be suspended, by a two-thirds vote, in order to do this.[1]

In 1857 the Army Appropriation bill was sent to conference on a motion made almost immediately after the Senate amendments were taken up in the House. The bill returned from the Senate on March 2nd and Representative Lewis D. Campbell, of Ohio, moved at once to take up the amendments. That motion passed, he moved to non-concur in them. William Smith, of Virginia, demanded the reading of the amendments, declaring that, in spite of his respect for the committees of conference, this was the only time the House would hear the amendments read. Campbell moved to suspend the rules so as to dispense with the reading and his motion was carried. Smith asked if he could be compelled to vote on a proposition he had never heard read and an appeal by him from a decision of the Chair that he could be so compelled was laid on the table. When he demanded a separate reading on each amendment the rule requiring a separate reading was suspended. Benjamin Stanton, of Ohio, then took up the battle and demanded the yeas and nays on the motion before the House, the motion to non-concur. They were not ordered. On his inquiry whether two-thirds of the House could take away his right to ask a division, the Speaker replied that the rules gave him that right but that

[1] See *supra*, pp. 66-68.

the rules had been suspended. Finally Smith asked that the Speaker state the substance of the amendments. The Speaker instead stated that the question was on non-concurring with the amendments of the Senate, and this motion was carried.[1]

The Navy bill went to conference in the same way.[2] In this case Mr. Stanton rose to a point of order that the amendments contained appropriations and must be taken up in the Committee of the Whole, but the rule [3] requiring that was suspended. All demands for explanation of amendments or for yeas and nays on the question of non-concurrence were refused on the ground of its being so late in the session. Mr. Jones of Tennessee called the process by which this bill was sent to conference a burlesque of legislation.

The practice of suspending the rules in order to get bills to conference at an early stage had thus begun in the House in the fifties. Apparently the Senate did not take any initiative in hastening the process necessary to reach the conference stage until the seventies. In 1872, however, there was a case in which the Senate asked a conference immediately after passing a House bill with its own amendments. This was the Sundry Civil appropriation bill and the Senate amendments provided for an appropriation for the Judiciary. This amendment was termed in the House the "bayonet clause" because it provided for Federal control of elections. Before the House had any opportunity to see the Senate amendments to decide whether to accept or reject them, the Senate had insisted upon them and asked a conference with the House.[4] The New York *Times* of the day after this, June 9, 1872, published an account of the reception given to

[1] See *Globe*, 34th Cong., 3rd Sess., March 2, 1857, p. 972.

[2] *Globe*, 34th Cong., 3rd Sess., March 3, 1857, p. 978.

[3] For this rule see *House Manual*, 1923, sec. 815.

[4] *Globe*, 42nd Cong., 2nd Sess., June 8, 1872, pp. 4428-4435; Hinds, vol. v, sec. 6293, p. 656.

this request by the House of Representatives. There was a filibuster on the part of the Democrats to keep the bill from passing. But rather than go to the country purely as obstructionists they finally yielded to a motion by General Garfield to suspend the rules and send the bill to the conference asked by the Senate. They yielded, but with the apparent determination that if the obnoxious Judiciary amendment should be retained they would undertake to filibuster the bill to death.

Here, again, the only way in the House to send the bill to conference immediately was to suspend the rules. What the New York *Times* called a filibuster on the part of the Democrats was, of course, a discussion of the parliamentary rights of the case, but there probably is no doubt but that those taking part in this discussion were striving primarily to defeat the bill on its merits and not for the parliamentary principle involved.

The question as to which house should ask the conference came up in 1876. The House of Representatives had disagreed to the Senate amendments to the Consular and Diplomatic Appropriation bill and had returned the bill to the Senate without asking a conference. This omission caused comment and question in the Senate, but Senator Sargent who had the bill in charge explained that the House had observed a proper parliamentary practice in leaving the House which had made the amendments to ask the conference. He said that the Senate and the House had gotten into the habit, when they were very much hurried toward the close of the session and time was of great consequence, of asking for a conference at the same time that they nonconcurred. However, if the precedents were consulted it would be found that the older practice was for the amending house to ask the conference.[1] In both the older and

[1] *Record*, 44th Cong., 1st Sess., April 25, 1876, pp. 2732, 2733; Hinds, vol. v, sec. 6283, p. 652.

the newer practice the amending house asked the conference, but the effect was different in the two. For by the older practice the amending house sent back the bill with its amendments to the originating house, which non-concurred in them, and then the amending house asked the conference. The newer practice which was just being introduced and of which the manner of getting to conference the Sundry Civil appropriation bill of 1872 was an example, permitted the amending house to ask the conference without the intermediate step of disagreement to its amendments by the house of origin.

In 1879 the question again came up in the Senate and this time with a stronger emphasis upon the newer practice of the Senate. On March 1, 1879, very near the end of the short session, the Senate had passed the Legislative appropriation bill, of course with amendments, when Senator Anthony of Rhode Island said he should like to make a suggestion that would facilitate business. He thereupon proposed that the Senate request a conference and appoint managers to serve. Senator Blaine, who had long been Speaker of the House, said that this had been done before, he thought about three or four times during the last fifteen years. He defended the plan, believing that it could do no harm and that it could be made to save time. There was some little question and criticism, but the Senate acceded and asked the conference.[1] This practice later came to have a marked effect upon the general influence of the House of Representatives.

During these years when the privileged character of conference reports was becoming so firmly established, more than one effort was made to extend the privilege accorded to the report to other motions and questions connected with

[1] *Record*, 45th Cong., 3rd Sess., March 1, 1879, p. 2188; Hinds, vol. v, sec. 6296, p. 659.

the conference committee system, especially for the purpose of hastening the process of sending bills to conference. These efforts did not meet with much success. For instance, in the House in 1860 a request for the consideration of a message from the Senate asking a committee of conference on the disagreements in regard to the Washington Market bill, was urged as a privileged question, but the Speaker ruled that it was not such.[1] When later, however, leave was asked to report from the committee of conference on this same bill, the Speaker ruled that this was a matter of privilege.[2] Thus the conference report was recognized to have the right of way over all other legislation, but this privilege was denied to a motion to consider a request for a conference. Then, and now, the bill must actually be at the conference stage in order to have this high privilege.

A somewhat similar effort was made that same year to hasten the Army appropriation bill to conference. This time Senator Hunter attempted to maintain the privilege of a motion treating all the House amendments as a whole and sending the bill to conference, in analogy with the well-established practice of treating conference reports as a whole. Senator Trumbull had made a motion to concur in the first amendment; Hunter's was to non-concur in all of them and request a conference. Hunter's argument was that his motion dealt with the whole bill and should be accorded the same priority granted a motion to adopt a conference report. In order that business might be carried on with dispatch, he said, it should be within the power of the majority, if they chose, to object to amendments *en masse* and ask for a committee of conference. A lively discussion followed. Senator King said he would not give his consent to grouping the amendments before they were read, as he wished a chance

[1] *Globe*, 36th Cong., 1st Sess., Apr. 20, 1860, p. 1815.

[2] *Globe*, 36th Cong., 1st Sess., May 4, 1860, p. 1922.

to vote separately on any one of them. Senator Pugh said he cared little about the present bill but that the extraordinary proposition of Senator Hunter would in effect disfranchise every Senator on the floor. The result of the debate was that the amendments were read and voted on separately and so this effort to extend privilege failed.[1]

In the House during these thirty years, from 1853 to 1883, the conference report gained in privilege in several ways: in the privilege accorded it upon presentation; in the establishment of the understanding that it must not, under any circumstances, be laid on the table; in the reaffirming of the principle, once and for all, that it must be voted upon only as a whole, and in the setting aside of the old practice by which a preliminary consideration of it might be required in committee of the whole or some other committee before it was received in the House.

On July 6, 1870, Speaker Blaine made a definite statement to the House of Representatives of his attitude in regard to the precedence to be accorded to the conference report. This statement follows:

> The Chair desires to state to the House, in order that there may be no misunderstanding, that conference reports will be regarded as privileged above all other matters that may come before the House, even to the extent of taking any member from the floor, although he may occupy it upon another subject, if the member having charge of the conference report shall so desire. This is the way the Chair will rule in relation to conference reports.[2]

The Chair had been ruling in this way for the most part during the preceding twenty years, but this is the most definite statement of the practice that had been made.

[1] *Globe*, 36th Cong., 1st Sess., June 15, 1860, pp. 3027-3030.

[2] *Globe*, 41st Cong., 2nd Sess., p. 5241; Hinds, vol. v, sec. 6446, p. 753.

Another privilege of the conference report was the understanding that it must never be laid on the table. As late as 1857 a motion to lay a conference report and the bill with it on the table was entertained in two cases, that of the Military Academy Appropriation bill on February 14 and the Tariff bill on March 2, 1857.[1] It was in the second session of the forty-second Congress, in 1872, that Speaker Blaine defined this matter of privilege as he had defined that of the precedence of conference reports. He said that he had uniformly declined to entertain a motion to lay a conference report on the table for the reason that the bill was laid on the table with it, thus allowing no opportunity for the House and Senate to have a second conference. In order to settle the question Mr. Hoar appealed from the decision of the Chair. At the time, on motion of Mr. Banks, the appeal was laid on the table, but it appears that it was later taken from the table and the decision of the Chair sustained.[2]

The question came up again, however, in 1876, in connection with the conference report on the River and Harbor appropriation bill, and Mr. Hoar made a point of order against a motion to lay the report of the conference committee on the table. Speaker Blaine asked that a motion be made to that effect in order that this important matter might be settled. The motion was made and it was formally ruled, and the ruling sustained, that a motion to lay a conference report on the table was not in order. The only parliamentary motion proper for the purpose desired was one to postpone consideration of the conference report. One reason given for this ruling was that the order to lay on the table was never communicated to the other house and courtesy

[1] *Globe*, 34th Cong., 3rd Sess., p. 700; *House Journal*, p. 609; Hinds, vol. v, sec. 6542, p. 793.

[2] *Globe*, 42nd Cong., 2nd Sess., June 8, 1872, p. 4461; Hinds, vol. v, sec. 6539, p. 792.

would require such communication of the disposal of the report of a conference committee.[1] This was another decision that made the machinery of the conference committee system run a little more smoothly.

In 1871 Speaker Blaine ruled upon a third matter of privilege of conference reports. When the conference report on the Army appropriation bill was presented, the question was asked as to whether the report, since it proposed an appropriation of money, would not properly go to the Committee of the Whole. Speaker Blaine ruled that it would not, that a conference report was privileged in the highest degree and that the only action to be taken on it was acceptance or rejection by the House.[2]

At times during this period between 1853 and 1883 there was a good deal of discussion in Congress of the merits and the evils of the conference committee system. In 1860 Senator Lyman Trumbull, of Illinois, made a rather determined fight against legislation by the conference committee. He attacked the conference report on the Indian Appropriation bill which was brought in two days before adjournment carrying ninety-two amendments. This conference report, said Trumbull, was only an illustration of the way in which most of the legislation was enacted. He asked how many of the Senators present knew what these amendments were on which they were to vote. New provisions had been introduced into the bill and the Senate would not have an

[1] *Hinds*, vol. v, sec. 6540, p. 793; *House Journal*, 44th Cong., 1st Sess., p. 1423. Hinds explains in a note that under the general parliamentary usage a matter laid on the table is not finally disposed of. This is why the fact that a conference report has been laid on the table is not announced to the other house. But whatever the theory was, the practice which had developed in the House had been that when a conference report was laid on the table, it was as much a final adverse decision as a negative vote on the passage of the bill.

[2] *Globe*, 41st Cong., 3rd Sess., p. 1915, March 3, 1871; Hinds, vol. v, sec. 6561, p. 801.

opportunity to vote on them separately. Senators would be told that they must adopt the report no matter what it was or whether or not they understood the amendments that had been made to the bill. Otherwise the whole appropriation bill would be lost as there were only two days before adjournment. Senator Trumbull wished the country to know that nearly all our legislation at that time was passed in the form of amendments to appropriation bills and that these were fixed up by committees of conference. The Senators as a body never knew upon what they were voting. In the present case he did not know that there was anything wrong in the bill nor did he know that the bill was right, as amended. Not knowing positively that it was right, he would vote against concurring in it until there should be an opportunity to have it printed and laid on the desks of the Senators.

In answer to this attack, Senator Pearce, who had made the report, said that Trumbull seemed to be making a general complaint against the parliamentary law and the rules of the Senate. He suggested that the Senator contrive to furnish the Senate with some better plan of proceeding, something wiser than anything heretofore devised by the great parliamentarians of England and the United States. He contended that it was nobody's fault if the Senator did not understand the bill. He had made, he said, a fuller statement than usual of the amendments and the reasons for them. He felt that he understood them after spending three or four hours over them. If others did not it was because of inattention on their part or because the amendments were so inherently difficult that a Senator could not understand them without making a special study of them for days. That could not be expected of any Senator.[1]

Trumbull's protest had no effect in the case of the Indian

[1] *Globe*, 36th Cong., 1st Sess., June 15, 1860, p. 3030.

Appropriation bill, but a similar one made on the same day, against sending the Army Appropriation bill to conference before the amendments of the House were read or an adequate explanation given of them, did have effect. The Senate, it seemed, had agreed to postpone the day of adjournment and therefore Trumbull argued that there was time to do the business differently. He characterized conference committee legislation as the worst kind of legislation in existence. In this case if the chairman of the committee having the bill in charge would but tell the Senate which of its amendments had been amended by the House and which rejected, perhaps the Senate would agree, perhaps recede, and there would be no need of a conference committee. For the moment Senator Hunter, who had made the motion to send the bill to conference, withdrew it, but only to renew it later on the same day. Trumbull renewed his attack also and called for the action of the House on the Army Appropriation bill. The presiding officer ruled that the amendments should be read. Trumbull then moved to agree to the first amendment amended by the House. His plan was to go through the House amendments to the Senate amendments. This plan was approved by Senator Hamlin, who argued that if thereafter there were any of these amendments to which the Senate could not agree, it would then be time enough to ask for a conference. Senator Hunter made the claim that his motion to non-concur with all of the House amendments and send the bill to conference should have priority because it dealt with the bill as a whole. Senator Pugh said that such a proposition as this practically disfranchised every Senator on the floor. Senator Grimes contended that the amendments could be disposed of *seriatim* in half an hour. Trumbull thus had considerable support. He had his way as to the reading of the amendments and they were discussed and voted upon separately. This dis-

cussion was in some respects embarrassing to Senator Trumbull, however. When he professed not to know whether the first amendment was right or not, Senator Davis answered him, perhaps with justice, that the only way to know was to go into conference and find out from the House committee. To the next amendment Trumbull moved to concur. When pressed for a reason, he said that it was a reduction in an appropriation and that it was his rule that when two bodies of equal intelligence reported two different sums for a specific work about which he had no particular knowledge, he voted for the lesser sum. Davis ridiculed this policy and again said that the action of the other House could not be understood without conferring with it by committee. The bill went to conference notwithstanding the vote on each amendment, but when the conference report was brought in each amendment was explained by Senator Pearce with great care.[1]

By 1864 Senator Trumbull seemed to have had some change of heart toward the conference committee system. Senator Hendricks protested against sending the bill for conscription to conference when the two Houses agreed to scarcely anything on the subject. Trumbull asked him if there was any other way of getting at the matter. In denouncing conference committee legislation Hendricks gave an instance quite flagrant in character in which a conference committee put a tax of a dollar and a half a gallon on whiskey when the House tax had been one dollar and the Senate tax a dollar and a quarter. This conference report had been adopted with hardly any consideration by the Senators. Senator Trumbull answered that he had fought conference committee legislation for six years and had always been

[1] For the debates and reports on this Army Appropriation bill see *Globe*, 36th Cong., 1st Sess., June 15, 1860, pp. 3009, 3027, 3028, 3029, 3151, 3152, 3168.

defeated. He added that it was the Senators' own fault if they did not understand the report when it came in.[1]

In 1867 Senator Conness protested vigorously against a bill for the "more efficient government of the Insurrectionary Southern States" being sent to a conference. He said: "We know very well how matters are managed by conference committees. We know what compromises are made and how little is to be said and how little to be done when their reports come before us." This question, he said, transcended in importance any other that had come before the American Congress and it should be treated with the deliberation which its importance demanded. While he admitted that conference committees were generally appointed in such a way as to reflect the opinions of the two bodies on the question involved, yet he need not say that of all legislation that which was the result of action in a conference committee was the least satisfactory.

Senator Sherman said that he would ordinarily be in favor of a conference committee as a matter of course, but that in this case he knew that the Senate amendment could not be accepted by the opposition in the House unless fire and water could be mixed. Therefore he could see no reason for sending the bill to conference. There was so much protest that finally Senator Williams withdrew his motion to send the bill to conference.[2]

During the thirty years under discussion, from 1853 to 1883, such machinery of control of conference committees as had been used before was retained and some new methods of control were evolved. The question as to whether the Houses should instruct their committees was one which frequently arose. Instruction if carefully followed up when the report is brought in may be a mildly effective means of

[1] *Globe*, 38th Cong., 1st Sess., July 1, 1864, p. 3461.

[2] *Globe*, 39th Cong., 2nd Sess., Feb. 19, 1867, pp. 1555-1557.

controlling a conference committee. However, if carried too far it may take away the free character of conferences. The latter view has been the one generally taken by the Senate while the House of Representatives has as a rule adhered to its right to instruct its conferees. A very early example of this difference in attitude between the two Houses is to be found in the fourteenth Congress in 1816. On the question of legislation to carry out the convention with Great Britain in 1816 in regard to commerce, a conference was held at which the House conferees presented a written statement of the views of the House of Representatives on the matter. There had been a lengthy debate in the House as to the propriety of any legislation and this debate had resulted in a vote of specific instructions to the managers. The conference committee of the Senate did not take kindly to this written statement presented by the House committee and declined pursuing this mode of communication as unusual and calculated in their belief rather to defeat than to promote the object of the conference, which was an agreement of the two bodies on the subject of dispute. They were willing, however, to consider the statement after it was read, as if it had been made in the ordinary form.[1]

On some occasions the conference committees from the Senate, after a failure to agree, have found it advisable to ask the Senate for instructions. There are instances of this in 1855. Senator Hunter, on the part of the conference committee on the Civil and Diplomatic appropriation bill asked for instructions from the Senate in regard to three points. The instructions were given. The Senate committee on the Naval bill likewise asked for instructions and were given them.[2]

The Senate's traditional attitude toward instructions was

[1] See *Annals of Congress*, 14th Cong., 1st Sess., p. 1022.

[2] *Globe*, 33rd Cong., 2nd Sess., March 3, 1855, pp. 1147, 1148.

shown, however, in a debate on the appointment of the third conference on the Internal Revenue bill of 1864. The House had already appointed its conferees and had instructed them in regard to a certain tax on liquors. Senator Sherman submitted a resolution agreeing to the conference and instructing the Senate conferees in such a way that they could agree with the House conferees on the liquor tax. Sherman pled for the plan as a matter of expediency, contending that there was no limit to the power the Senate had over its committees, among them its committees of conference. It might authorize them to agree to amendments to its amendments which might not be in order coming from the conferees themselves. The Vice-President ruled Sherman's resolution to be in order, but the Senate was in much doubt. After a good deal of discussion in regard to the theory of instructions in general and the merits of these instructions in particular, Sherman's resolution was lost. The Senate then adopted a resolution to the effect that it disagreed to the conference asked by the House and asked in its stead another free conference.[1]

In this case the decision was in favor of the right to instruct; at least, the decision of the Vice-President was. The Senate, however, did not sustain the decision, although it did not take any vote to overrule it. It merely passed a negative vote on the particular resolution of instruction. Later, however, the Senate decided that conferees may not be instructed. This was on March 3, 1873, during a discussion of the conference report on the Legislative appropriation bill. Senator Wright had made a motion to recommit the bill to the committee of conference with instructions to strike out all that portion relating to salaries of Senators and Representatives. Senator Trumbull raised the point of order that it was not competent for the Senate to instruct the Com-

[1] *Globe*, 38th Cong., 1st Sess., March 2, 1864, pp. 900-907.

mittee of Conference. The Presiding Officer, who happened to be Senator Edmunds of Vermont, overruled the point of order, quoting from Barclay's Digest to the effect that a conference committee may be instructed like any other committee. However, an appeal was taken and, as Hinds says, debated at length and learnedly, the nature, history and objects of conference committees being explored—notably by Senators Sherman, Bayard, Conkling, and Hamlin. The Senate by a vote of fortysix to eleven overruled the decision of the Chair. It is rather difficult to avoid the suspicion that in this case the subject of the proposed instructions had something to do with forming this parliamentary precedent. This was the conference report which permitted salary increases not only to Senators and Representatives but to all the House and Senate employees as well.[1] The majority of the Senators did not want to instruct the managers to strike out the salary clause, neither did they think it politic to instruct them to leave it in the report. The most diplomatic action was a decision not to instruct at all.

In modern times the House of Representatives occasionally gives instructions to its managers to recede in regard to certain amendments. This was done in June, 1878, after two unsuccessful conferences on the Legislative appropriation bill.[2] In the early practice the House would have sent a message directly to the Senate announcing that it had receded from such and such amendments.

In 1882 the question came up in the House as to whether a conference report could be recommitted to a committee of conference with instructions to add a proviso which was outside the questions originally committed to them. Speaker Keifer ruled that it could not be done. He said he was not

[1] *Globe*, 42nd Cong., 3rd Sess., pp. 2173-2184; Hinds, vol. v, sec. 6397, p. 706. Also New York *Times*, March 2, 1873.

[2] *Record*, 45th Cong., 2nd Sess., June 15, 1878, p. 4689; Hinds, vol. v, sec. 6382, p. 699.

prepared to hold that the House might not instruct the committee to recede or to insist upon some matter which was particularly before it. But this resolution went further and proposed to instruct the committee to take up a new matter not referred to it; therefore it was not in order.[1] As can readily be seen from the examples just given, the practice of instructing managers resulted in very little check upon the power of the conference committee.

The question of dealing with new matter in conference reports is the one of paramount importance if the managers are to be controlled at all. It has been shown that the point of order was used against such reports before the fifties in so few instances that it was practically unknown.[2] However, it was employed in the sixties and it came to be the prescribed procedure, at least in the House, to be used in fighting what has often been called the usurpation of legislative power by the managers of conference committees.

The point of order was not used against conference reports in the Senate until long after it was introduced into general use in the House. In 1862 new matter in the conference report on the Bounty Land bill was very carefully discussed in the Senate and the report was, in the end, rejected, but without a point of order.[3] When the conference report was presented on June 16, 1862, the Vice-President, Hannibal Hamlin of Maine, called the attention of the Senate to the fact that the conferees had changed the text of the bill, to which both houses had agreed. He said that he was informed that there were precedents for such action, but after sixteen years of service in Congress he had no per-

[1] *Record*, 47th Cong., 1st Sess., July 25, 1882; Hinds, vol. v, sec. 6387, p. 701. This was in connection with the River and Harbor bill.

[2] See *supra*, pp. 69-72.

[3] *Globe*, 37th Cong., 2nd Sess., pp. 2722-2724, 2746-2748; Hinds, vol. v, sec. 6435, p. 747.

sonal knowledge of them. Furthermore if there had been any such precedents they had been in violation of parliamentary law. The debate on this report lasted several days. Senator Lafayette S. Foster of Connecticut, from the conference committee, defended the conference report on its merits and submitted the opinion that the danger of conference committees usurping the power of the two houses was not great. Senator Howe did some research into the English practice in dealing with new matter but produced no evidence of any value. During the discussion a motion was made to recommit the report to the committee of conference but objection was made by Foster on the ground that the House of Representatives had already agreed to the report and that therefore the conference committee of the House was no longer in existence.[1]

The Senate finally rejected the report on account of the new matter it contained. A second conference found that a perfect bill could not be obtained without changing the original text and the managers decided to report a disagreement with the purpose of abandoning the bill. Senator Sherman, chairman of the second conference, by request of the conference committee, who, he said, refused to overstep its powers as the former committee had done, offered on his own initiative, a new bill.[2] In the House an identical report, including the explanation, was made by Representative Washburn and a new bill was offered by him.[3] However, this bill was referred to the Committee on Ways and Means. The new bill passed the Senate on July 5 and the House on July 7.[4] Foster felt in this case that injustice had been done

[1] *Globe*, 37th Cong., 2nd Sess., June 17, 1862, pp. 2746, 2747; Hinds, vol. v, sec. 6553, p. 798.

[2] *Globe*, 37th Cong., 2nd Sess., June 20, 1862, p. 2832.

[3] *Globe*, 37th Cong., 2nd Sess., p. 2847.

[4] *Globe*, 37th Cong., 2nd Sess., pp. 3115 and 3135.

the first conference, of which he was chairman. The second conference under Sherman's leadership had proved that a workable bill could not be produced without introducing new matter. If so, said Foster, why pour execrations upon the heads of the first committee which had only added the necessary new matter?

In July of this year, 1862, the question of new matter in the conference report on the confiscation bill arose in both Senate and House. In the Senate the Vice-President said the case presented no point of order for the Chair to decide and called attention to the fact that the amendment of the Senate was in the nature of a substitute, so that the whole subject was placed within the jurisdiction of the conference committee.[1] In the House, Speaker Grow declined to rule out the conference report on the confiscation bill, on the ground that it contained matter not in difference between the two Houses and not committed to the conferees. He held that the presence of such matter might be reason for rejection of the report by the House. At the same time, however, he ruled as to the propriety of the report in what it contained in another way.[2] According to Hinds, it is only in later years that the Speakers have assumed authority to determine whether or not the managers of a conference have transcended their powers.[3] But if presiding officers did for a long time decline to take that responsibility, both House and Senate have always been averse to receiving reports in cases where the managers have exceeded thier powers.[4]

Following the rejection of the conference report on the Bounty Land bill, the conference committee in charge of it reported the Indian Appropriation bill with a recommenda-

[1] *Globe*, 37th Cong., 2nd Sess., p. 3275.

[2] *Globe*, 37th Cong., 2nd Sess., July 11, 1862, p. 3267; Hinds, vol. v, sec. 6414, p. 723.

[3] Hinds, vol. v, sec. 6407 and 6409.

[4] Hinds, vol. v, sec. 6414, p. 723.

tion that it be rejected because it contained new matter not in the original bill or in the amendments. A further conference reached an agreement and the report was adopted by both Houses.[1] This suggests that the conference committee was being reformed rather than controlled.

In 1871, when a question of order was raised against the conference report on the Army Appropriation bill because the conferees had created a commission to deal with certain claims which the Senate had dealt with in a different way, Speaker Blaine ruled that such new matter as there was was germane to the provision in the bill and therefore strictly within the purview and power of the committee of conference. He added a sort of *obiter dictum* to the effect that if it were entirely new matter he would have no hesitation in ruling it out.[2]

In this same year Speaker Blaine was given a chance to prove the truth of the last assertion. New matter, not germane, was presented in the conference report on the Deficiency Appropriation bill, and a point of order made against it. Mr. Holman, who made the point of order, specified that there were two new propositions, a provision making appropriation for the Sutro Tunnel and one for the Agricultural Department. It could not be proved that these were germane to anything in the bill. Speaker Blaine admitted that the point of order would lie against the conference report but said that during his experience he had never known a conference report ruled out on a point of order. He therefore submitted the point to the House, which sustained it by a vote of 82 to 33.

The report having been thus ruled out, the Speaker said that he was at a loss to know what message to send the

[1] *Globe*, 37th Cong., 2nd Sess., June 20, 1862, p. 2840.

[2] *Globe*, 41st Cong., 3rd Sess., March 3, 1871, p. 1916; Hinds, vol. v, sec. 6411, p. 721.

Senate. The suggestion was made that as the report had not been received it was still with the committee, and that therefore the committee might make a new report. In line with this, Mr. Banks of Massachusetts moved to send a message to the Senate with the information that the report had been ruled out. He later withdrew his motion, however, and finally James A. Garfield of Ohio moved to recommit the report to the committee of conference, and this motion was carried.[1]

Senator Edmunds was ever watchful of parliamentary points. On August 12, 1876, he made a point of order against the conference report on the Legislative Appropriation bill because it contained new matter. Senator Windom, the Chairman of the Senate conference committee, admitted the point of order, saying that he understood it much better after the discussion than he had while in conference committee, but he appealed to Senator Edmunds to allow the bill to go through. Senator Edmunds said that the point of order was one that ought to be taken on every occasion of this kind, as in fact it generally was. He intended to withdraw it as soon as he had heard the decision of the chair. He made it so that, as "instances make order," as the phrase went, it should not after awhile be found in order for the conferees to put in whatever they liked that the two Houses never heard of and force them to take it at the end of the session. The Chair sustained the point of order and Edmunds withdrew it, giving notice, however, that he would never do so on another occasion.[2]

The question of what to do with a conference report after a point of order was sustained against it, as we have seen, bothered Speaker Blaine, and on the occasion in question it

[1] *Globe*, 42nd Cong., 1st Sess., April 19, 1871, p. 796; Hinds, vol. v, sec. 6409, p. 720.

[2] *Congressional Record*, 44th Cong., 1st Sess., August 12, 1876, p. 5529.

was decided to recommit it to the conference committee. Since 1918 that practice has been followed in the Senate but it was not often done in the period we have been considering. Until 1918 recommittal was employed only for the purpose of correcting minor errors, practically never for the purpose of disciplining a conference committee which had overstepped its powers.

As has been said before, the Conference Committee System had evolved almost without any definite rules governing it in either house. The first joint rule [1] providing for conference committees in cases of disagreement between the two houses had been followed by a number of others, none of them relating specifically to conferences but dealing largely with the treatment of bills. All of these joint rules were allowed to lapse in 1876,[2] and outside the general par-

[1] See *supra*, pp. 38, 39.

[2] For a list of the joint rules, see Hinds, vol. iv, sec. 3430.

From the first Congress up till 1876 the houses had carried on dealings with each other under the operation of joint rules which had, at different times, been adopted by the two houses, acting concurrently. It had been assumed throughout a priod of nearly a century that these joint rules continued in force from Congress to Congress. In 1875 for the first time this assumption was questioned. In that year the Senate became desirous of dropping one of these rules, the twenty-second, which dealt with the manner of counting the votes of the President and Vice President. For the first time in fifteen years the House and the Senate had majorities representing different political parties and the next year was a Presidential year.

On motion of Senator Edmunds a resolution concerning the joint rules was committed to the Committee on Rules. Hannibal Hamlin reported from that committee on January 10, 1875. The Senate, he said, was a continuing body that had existed since the first Congress, but the House of Representatives expired at the close of each Congress. How, then, could the joint rules continue automatically from Congress to Congress? Each House of Representatives, at the beginning of each Congress, adopted its own rules. In 1869 the House did consider a resolution declaring that the rules should be the rules of that House and of succeeding Houses until otherwise ordered. The Chair, however, overruled it on the ground that the Constitution clearly gives to each House the right to adopt its

liamentary law there were for a time no rules in House or Senate governing either the conference committee or any of the relations between the two houses. Perhaps this is part of the reason why, in 1880, the House passed its first definite rule in regard to conferences.

The committee which drew up this rule said that it merely crystallized into a rule the practice of the House since the thirty-first Congress.[1] The effect of the first part of the rule is to establish beyond question the privilege of precedence of conference reports. This part of the rule is as follows:

Section 1 a. The presentation of reports of committees of conference shall always be in order except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition.

During the debate on this section when it was offered in

own rules. This must of course include joint rules as well as any others. But it had not been the practice for each House of Representatives to adopt the joint rules. Since they had not been adopted by each House of Representatives, among them the present one, then they were not binding upon the present House. And if they were not in force in the present House, then, being joint rules, neither were they in force in the Senate. So it appeared to Senator Edmunds, who had moved that the Senate adopt the joint rules. A further motion was made to strike out the twenty-second rule and the question was allowed to go over for the time being. See *Cong. Rec.*, 44th Cong., 1st Sess., Dec. 15, 1875, pp. 220, 309, 431.

When it was taken up again on January 20, 1876 there was more general discussion. As far as anyone knew this was the first time an amendment or cancellation of any of the joint rules had been proposed. Senator Bayard moved that the matter be referred to a Committee of Conference of the two Houses. This motion was lost, however, and no action was taken in either House, the joint rules being allowed to lapse. *Cong. Rec.*, 44th Cong. 1st Sess., pp. 517-520. It seems to have distressed Senator Edmunds somewhat and from time to time in debates on conferences, allusion was made to the fact that there were no joint rules governing the intercourse between the two Houses. *Rec.*, 44th Cong., 1st Sess., March 8, 1876, p. 1544.

[1] See *Record*, 46th Cong., 2nd Sess., pp. 203, 1202, 1203.

the House, Mr. Charles G. Williams of Wisconsin suggested an additional section requiring the presentation with every conference report of a statement to explain the effect of the report upon the bill. This provision was adopted and stands, together with the first section, as Rule XXVIII in the *House Manual*. It reads as follows:

Section 1 b. And there shall accompany every such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions will have upon the measures to which they relate.[1]

This was a new requirement, at least in its formal aspects.[2]

[1] This was Rule xxix when it was adopted in 1880, *Record*, 46th Cong., 2nd Sess., Jan. 6, p. 203. See *House Manual*, sec. 885, pp. 407, 408. See also Hinds, vol. v, sec. 6443, p. 751.

[2] That there had been need of such a rule had been evident for many years. An example taken from the early days of conference committee power will show to what lengths managers had at times gone in refusing to explain their action. When the Civil appropriation bill of 1857 was reported in the House on March 3, there was much complaint that members of the House were being asked to vote blindly on a bill appropriating large sums of money. Nevertheless, all requests that the bill and the amendments be read were denied and the Speaker ruled that the report of a committee of conference contained all on which the House passed judgment and no member had a right to insist on more explanation. He admitted when questioned that he could not select any amendment by number and tell what was in it, but when Representative Perry attempted to make a point of order on the ground that the amendments had not been read, the Speaker ruled it out because the amendments had been dealt with in the House by unanimous consent or suspension of the rules. An appeal from this decision of the Chair was laid on the table. See *Globe*, 34th Cong., 3rd Sess., March 3, 1857, p. 995.

When an explanation of this report was requested in the Senate, Senator Hunter maintained that if the managers stopped to explain the various items there would not be time to enroll the bill. He called attention to the fact that the House committee could not stop to explain in the House, where an explanation was of more importance because the members of the House had not seen the Senate amendments. See *Globe*, 34th Cong., 3rd Sess., March 3, 1857, p. 1113. The report was accepted in this case and in many similar cases. It is true, however, that before 1880, it had become a general practice for one of the members of the conference committee to offer some explanation of the report. Sometimes the explanation was very clearly made.

Very soon after its adoption Speaker *pro tempore* Springer was called upon to interpret its meaning. He did so with some elaboration, saying that he understood that the new part of the rule was to change the old practice of calling on any member of the conference committee to make some explanation of the effect of the report if adopted. Furthermore he understood that this statement must be something in addition to the report of the conference committee, an explicit, detailed statement which of course could not be the report itself. He was of the opinion that it should come with the sanction of the majority of the conferees, that it must be in writing and signed by the majority and should be sufficiently explicit that the members of the House on reading it could understand the changes to be effected by the conference report.

On the occasion of this ruling a report of a conference committee was ruled out of order because this statement did not accompany it.[1]

The Conference Committee System of the early eighties was a more effective piece of legislative machinery than the same system of the fifties. Its privileges had been confirmed by years of practice, by definite rulings of presiding officers, and by at least one formal rule in the House. At least one new practice had been introduced which lent it power, that of amending bills by substitute. The process by which bills were turned over at early stages to the conference committee had been refined and greatly expedited. The machinery of control was more effective in that in both Houses the point of order had been developed as a weapon that could be used against managers who overstepped their rights, and there had grown up a custom, in the House embodied in a formal rule, which demanded from the managers a clear explanation of the effect of every conference report.

[1] *Record*, 46th Cong., 2nd Sess., April 13, 1880, p. 2367; Hinds, vol. v, sec. 6505, p. 774.

CHAPTER VI

The Tariff Conference of 1883

The conference on the Tariff bill of 1883 is worthy of a separate chapter because it illustrates almost all of the practices connected with the Conference Committee System as developed up to that time. The legislative history of this bill, moreover, discloses some of the important steps in the evolution of the conference committee as an instrument of control by party leaders. By a series of opportunist maneuvers the party leaders forced both the Senate and the House of Representatives to pass a bill embodying tariff rates which were higher than had been approved by either house, and which, if separate votes had been permitted, the majorities in both houses would undoubtedly have defeated. A principal difficulty overcome by the manipulators in this instance was that of securing any conference at all, the two houses being, from their point of view, altogether too much inclined to agree on rates lower than were desired. The diary of Thomas B. Reed, according to his biographer,[1] indicates that he was "greatly impressed by the brilliancy of the parliamentary tactics, which, out of a situation which seemed well-nigh hopeless, secured the enactment of the law." This was comparatively early in the career of the future "Czar" Reed, but he had not long before been appointed a member of the Committee on Rules and it was a rule reported by him and, in common discussion, named

[1] McCall, *Life of Thomas B. Reed* (Boston and New York, 1914), p. 110.

for him, that made possible the consummation of the strategem.

For several years before 1882 it had been apparent to many that there was a need for tariff reduction. After 1879 the surplus revenue was on the average over a hundred millions annually.[1] In May, 1882, Congress passed an act creating a Tariff Commission to be composed of nine commissioners from civil life to investigate the various questions connected with a just revision of the tariff and to report their findings and advise such changes in rates as they thought best at the beginning of the second session of the forty-seventh Congress in December, 1882.[2] Although the members of the Tariff Commission themselves were all in favor of protection, nevertheless they recommended reductions which they estimated would reach an average of twenty-five per cent. As had been planned, their report was presented to Congress in December, 1882. By the House it was referred to the Committee on Ways and Means and by the Senate to the Committee on Finance. Both committees began work at once.

The Committee on Ways and Means reported their bill to the House on January 17, 1883.[3] It provided for much smaller reductions than had been advised by the Tariff Commission. Although there was a strongly protectionist majority, the Committee bill found little favor in the House. According to a correspondent of the *New York Times*,[4] on January 19 the Republican members of the Committee on

[1] See Taussig, *The Tariff History of the United States* (New York and London, 1923), p. 231.

[2] For a detailed account of the activities of the Commission see Stanwood, *American Tariff Controversies* (Boston and New York, 1903), vol. ii, p. 204 *et seq.*

[3] *Record*, 47th Cong., 2nd Sess., p. 1253.

[4] January 21, 1883.

Ways and Means succeeded in inducing a caucus of the Republicans of the House to agree to take up the Committee's tariff bill and press its consideration until it was disposed of. The caucus voted to take up the bill and keep it before the House, not to support it or to oppose amendments. No motion to this effect was adopted and the Committee did not dare to press one. Whether or not the correspondent of a Democratic paper is to be credited with accurate information respecting a Republican caucus, certain it is that during the next month, although many hours of debate were spent on tariff schedules, but little progress was made toward passing the bill. Mr. Kelley, of Pennsylvania, the Chairman of the Committee on Ways and Means, attempted on February 5 [1] to have the bill reported from the Committee of the Whole House on the State of the Union to the House on a two-thirds vote to suspend the rules. This would have had the effect of advancing the bill from the stage at which practically unlimited debate was permitted to the one at which the highly restrictive rules of the House prevailed, and this before all of the schedules had been debated. The necessary two-thirds [2] vote could not be had and Kelley's effort was defeated.

In the meantime the press had been predicting from time to time that if anything were done in the way of tariff reduction it would be the outcome of a conference committee. On January 19 an editorial in the *New York Times* characterized the House bill as a measure of pure obstruction. On the same date, the *New York Tribune,* a Republican paper, quoted a "prominent Republican" whom the *Tribune* did not name, who said that he foresaw a conference committee made up of Senators Morrill, Sherman, Aldrich, Bayard and Beck, and Messrs. Kelley, Kasson, McKinley,

[1] *Record,* 47th Cong., 2nd Sess., p. 2134.

[2] See *House Manual,* section 879.

Carlisle and Randall from the House. It is interesting to note that, with the exception of Mr. Kasson, all of these men were later appointed as members of the conference.

During the time that the House was thus debating the tariff but unable to act upon it, considerable progress had been made in the Senate on a tariff bill which had been reported by the Committee on Finance. As has been said before, the report of the Tariff Commission had been presented to the two houses of Congress early in December, 1882, and by the Senate it had been referred to the Committee on Finance, which committee had at once proceeded to work upon schedules providing for reduction. The Constitutional provision requiring that all revenue bills originate in the House of Representatives did not keep the Senate committee from reporting a bill embodying the results of its study of the report of the Tariff Commission. It was the short session and if the Senate was to have any opportunity to debate the tariff rates, there could be no thought of waiting for that opportunity until the House should pass a bill and send it to the Senate. This fact was realized before the House proved what difficulty it would have in passing a tariff bill, even before the Committee on Ways and Means reported its bill to the House. With the purpose, therefore, of bringing the tariff rates before the Senate for debate, the committee took up a short bill for the reduction of certain internal revenue taxes on tobacco and liquor and the repealing of others on bank deposits, matches and patent medicines, a bill which had passed the House in the first session of the forty-seventh Congress and had been debated at great length in the Senate but without result. The Committee on Finance now amended this bill by striking out and substituting for the House provisions for the revision of

certain internal revenue taxes, its own lengthy tariff bill. This bill, still bearing the title of the House bill for the reduction of internal revenue, was reported to the Senate in Committee of the Whole on January 10, 1883,[1] a week before the Committee on Ways and Means reported its bill to the House. This process of amending by substitute was not a new one,[2] but a tariff bill had not before been successfully substituted for an internal revenue bill. Senator Morgan of Alabama at once suggested that the members of the House of Representatives were likely to raise the question of the right of the Senate to originate a bill on the subject of taxation. However, consideration and debate of the bill were not stopped by this warning. For nearly six weeks this was the principal subject of debate in the Senate and on February 20 the bill, much amended, was passed by that body. The amendments were for the most part reductions in the rates proposed by the Committee on Finance and the result was a bill based in the main on the recommendations of the Tariff Commission.[3]

On February 20, 1883, the situation in regard to the tariff was somewhat as follows. The House Committee on Ways and Means had reported a bill providing for rates much higher than the rates recommended by the Tariff Commission, but it had been impossible to bring this bill to a vote in the House. The Republicans in the House had had several caucuses[4] and had at length given up all hope

[1] *Record*, 47th Cong., 2nd Sess., p. 1048.

[2] See *supra*, pp. 74, 76.

[3] Taussig, *op. cit.*, p. 231.

[4] See the Louisville *Courier-Journal* of February 21, 1883. This was Henry Watterson's paper. According to this account there were eighteen Republicans who had voted against the Tariff bill. They said they had

of passing the House bill. In the Senate the Committee on Finance had also reported a bill providing for rates higher than those advised by the Tariff Commission, but this bill the Senate had amended by making large reductions in the rates offered by the Committee. The House had a protectionist majority while the Senate was rather evenly divided between advocates of low and high tariffs. These were not, however, consistently ranged against each other on all subjects. On any particular schedule there was generally a majority who wanted the lower rates, and therefore on nearly all schedules the lower rates prevailed. However, practically all Republicans and a considerable number of Democrats wanted, each, high protection for some particular articles.[1] The bill that was thus produced was satisfactory to almost nobody. Especially were the Republican leaders, Senators Morrill, of Vermont, Sherman, of Ohio, and Aldrich, of Rhode Island, leaders alike in the Committee on Finance and in the Senate, dissatisfied with it, for they were irrevocably committed to a high tariff. There is evidence enough to justify the belief that they would never have allowed the bill to pass if they had not counted upon changing it in a conference committee. As early as January 23, the *New York Times* quoted Senator Sherman to the effect that he supposed the metal schedule would have to be settled in conference. In his "Recollections"[2] Sherman

done so because they would not dare go back to their constituents having voted to relieve bank capitalists and tobacco manufacturers without doing anything for the relief of the people. The relief to bank capitalists and tobacco manufacturers referred to was that provided for in the bill for the reduction of internal revenue taxes passed by the House in the first session and sent to the Senate, the same bill which the Senate had amended by substituting its own tariff bill.

[1] See Stanwood, *op. cit.*, vol. ii, pp. 208, 209.

[2] Sherman, J. S., *Recollections of Forty Years in Senate, Cabinet and House* (Chicago, 1895), p. 853.

does "not hesitate to say that the iron and wool schedules as they passed the Senate were unjust, incongruous, and absurd," and that he hoped at the time that a conference committee would amend the bill.

The possibility of arranging a tariff bill in a conference committee had been discussed by members of both houses for some time before the Senate bill was passed. The Senate leaders saw in a conference committee an opportunity of restoring some of the rates which had been so much reduced in the Senate. The House leaders saw in the machinery of the Conference Committee system a means of forcing a tariff bill through a House which had been unable to bring one of its own origination to a final vote. On the other hand, Senator Beck, a Democratic minority member of the Senate Committee on Finance, contended that there could be no conference on the bill, for whereas the Senate had considered the bill and voted on it by schedule, the House had not considered the larger part of the bill at all and had taken no vote on it.[1] The Republicans, however, held that it could be done and so the planning and speculation and caucusing continued.

There was much discussion of the rates in the bill that had passed the Senate and much speculation as to whether or not the House would concur or non-concur in them when the bill should be brought before it. Harry W. Oliver, a member of the late Tariff Commission, was quoted as saying of the Senate bill that it hit the iron, steel and wool interests a blow right between the eyes and that if these industries did not like the bill they had enough power in the House to kill it.[2] At a Republican House caucus as reported by the correspondent of the *Courier-Journal*[3] there

[1] See *Courier-Journal*, February 23, 1883.

[2] *Courier-Journal*, February 22, 1883.

[3] February 23, 1883. Due allowance should be made for the fact that

was a lengthy debate during which the leading men of Illinois, Ohio, Pennsylvania, New York and New Jersey, said emphatically that if this Senate Tariff bill were passed their states could not be carried by the Republican party at the next election. Even Representative Anderson of Kansas, who had said repeatedly that he favored concurring in the bill, now said that if it would affect his party so disastrously, he would vote to non-concur. On the motion of Mr. Kasson, the Republican House caucus committed itself to non-concurrence. There was also a caucus of both Senate and House Republicans which was described as most stormy, the House leaders, Kelley, Haskell and McKinley, abusing Senator Morrill and other Republican members of the Senate harshly for allowing the bill to pass that body in the state in which it did. Thirty or forty Republicans stayed away from the caucus for the reason, it was thought, that they were in favor of the Senate bill and, when given a chance to do so, would vote to concur in it.

The attitude of the Democrats toward the bill was an interesting factor in the situation. The elections had given a majority to the Democrats in the next House of Representatives which would meet the following December. This fact undoubtedly influenced the action of many of the Democrats of this session. The leaders did not want a record of obstruction to prejudice the success of the party in the next Congress. Some of them wished the tariff

this paper was Democratic and that therefore the correspondent may not have had the most reliable information as to what went on in a Republican caucus. His accounts of such meetings are offered for what they are worth. No correspondent of any other newspaper wrote of the Tariff Conference of 1883 with such keen interest and so much detail or with a better understanding of the parliamentary situation. When it has been possible to verify his statements, they have been found to be correct. Statements in regard to party caucuses, however, are practically impossible to verify. No Republican paper reported caucuses in great detail at this time.

question settled in the present Republican Congress in order that their party might be freed from the vexing problem which never could be solved to the satisfaction of everybody. The greater number of the Democrats were in favor of the Senate bill, preferring it to no tariff legislation at all, certainly to a tariff which would result from a conference committee. However, there were some Democrats who highly disapproved of the Senate bill. For instance, Judge Reagan of Texas, whom the *Courier-Journal* characterized as one of the clearest-headed Democrats on the floor of the House, called the Senate substitute a sham and a fraud which really afforded no relief to the people. And Mr. Thompson asked why the Democrats should vote to concur in this purely Republican measure. He would have let the Republicans have their conference committee if they liked and make the bill as obnoxious as they pleased. The more obnoxious it was the better it would be for the Democrats two years hence. In case it was very bad the Democrats might be able to change it in the next Congress. If, on the other hand, the Senate bill passed with the reductions it provided, there would be no chance of passing a Democratic bill in the next Congress. The position of Representative Randall, who was a protectionist Democrat from Pennsylvania and a candidate for the Speakership in the forty-eighth Congress, was of much interest to observers. Some thought he would oppose the Senate bill, others that he would help the Republicans to get it to conference.

Thus both Democrats and Republicans in the House were divided with regard to the Senate bill, although the majority of both parties wished some kind of tariff legislation. The majority of the Democrats and a large number of the Republicans favored the Senate bill. A minority of the Democrats, those who stood firmly for "tariff for revenue only" and those whose constituents demanded high protection,

together with the Republican leaders of the House and their following, were determined in their opposition to the bill. The Constitutional question of the right of the Senate practically to originate a tariff bill, although in the form of an amendment to a revenue bill originated in the House, caused some discussion, but the desire in the House was so great for some kind of tariff legislation that there seemed little probability that the point would be pressed.

In this interesting situation there were two technical problems which confronted the House leaders. The first of these concerned all those who for any reason were hoping to pass a tariff bill, as it involved the parliamentary difficulty of taking the Senate bill from the Speaker's table where it would lie when it was brought to the House after passing the Senate. There were other bills which had prior claims and their sponsors would insist upon their rights of precedence unless some special rule were made to apply to this bill. The second problem concerned the Republican leaders of the House, who, like the Senate leaders, intended that certain rates should be settled "in the quiet of a conference committee."[1] The great question with them was how to get the bill to conference, after it had been taken from the Speaker's table, without risking a vote to concur.

Looking to a solution of the first problem, on February 9, Representative Kasson, a Republican from Iowa, had offered in the House a resolution to be sent to the Committee on Rules, which read as follows:

> Resolved, That during the remainder of the session it shall be in order on any day, after the morning hour, to move to suspend the rules so as to consider in the House any regular appropriation or revenue bill which shall have been reported by a committee and may then be in Committee of the Whole House on the

[1] *Record*, 47th Cong., 2nd Sess., p. 3317, Speech of Thomas B. Reed.

State of the Union, or which may then be on the Speaker's table, and such motion shall be decided by a majority of votes.[1]

It will be noticed that this resolution was offered on February 9, eleven days before the Senate passed its bill. At first it seems to have been assumed that the Committee on Rules would, as a matter of course, report the resolution favorably. If adopted as a rule, it would do away with all difficulty about reaching the Senate bill. The *New York Evening Post* of February 12 gives an account of a Democratic caucus called to determine what stand the party should take when the Kasson Rule was reported. Days and weeks went by, however, and nothing was done. The bill passed the Senate as had been expected, but it was seen that its fate in the House was to depend upon the action of the three Republican members of the Committee on Rules. Of the Democratic members, Mr. Blackburn, of Kentucky, had declared himself willing to vote for the rule provided it should be made to apply generally and not for the present session alone, and Mr. Randall, a tariff Democrat from Pennsylvania, with strong aspirations for the Speakership in the next Congress, was desirous of having the tariff question settled before he should enter upon his final campaign for that high office. The Republican members were Speaker Keifer, of Ohio, Mr. Robeson, of New Jersey, and Thomas B. Reed,[2] of Maine, all of them bitterly opposed to the Senate Tariff Bill, and as firmly committed to a high tariff as were the Republican leaders of the Senate Committee on Finance. According to current comment, they would not agree to report the Kasson Rule unless they could muster from a safe number a pledge to non-concur with the Senate bill. This pledge, it seems, they could not get.[3]

[1] *Record*, 47th Cong., 2nd Sess., p. 2377.

[2] *Congressional Directory*, 47th Cong.

[3] See *New York Evening Post*, February 14, 1883 and *New York Times*, February 23, 1883.

As has been said before, after the Senate had passed its bill, a Republican House caucus was held which voted to non-concur with it.[1] At this same caucus,[2] as the Committee on Rules had not reported his resolution of February 9, Mr. Kasson moved that it be the sense of the caucus that that Committee should report a rule which would permit the majority of the House to take the bill from the Speaker's table for the purpose of non-concurring and sending it to conference. This was exactly what his former resolution was designed to do. There was strong opposition to Kasson's motion although it was admitted by all that if the bill was taken from the Speaker's table at present and a motion made to non-concur, Mr. Carlisle, the Democratic leader, would move to concur. As a motion to concur takes precedence over one to non-concur, his motion would be carried, because a majority of the Democrats and a minority of the Republicans would vote in favor of it. The Republicans would therefore be defeated in their object of getting a conference. No action was taken on Mr. Kasson's motion, although the caucus broke up with the understanding that the Committee on Rules should act upon it and bring in the necessary rule permitting the majority to take the Senate bill from the Speaker's table whenever the Republicans could get a majority to non-concur in the bill and that such a rule should never be reported if they could not muster the required majority.

On February 24, the *Courier-Journal* reported that the Republican leaders had been circulating a paper all day among their Republican friends in the House, urging those to sign it who favored adopting the Kasson rule. The high protectionists refused to sign it. They must have been afraid the rule might permit a vote to concur.

[1] See *supra*, p. 111.

[2] The *Courier-Journal* of February 23 describes this caucus but does not mention the date on which it was held.

The Democrats meantime decided not to hold any caucus although there had been considerable talk of it. They came to the conclusion that it was best to let the Republicans take the whole responsibility for the condition in which the tariff and revenue might be left at the end of the session. On a later date,[1] however, the Democrats did consider the proposed Kasson Rule in a caucus which showed their opinion to be uniformly against it as being unprecedented and arbitrary. However, the general sentiment favored mild opposition to it and condemned any such tactics as destroying a quorum by refusal to vote. At this caucus a committee of seven, including Messrs. Carlisle, Blackburn, Tucker and Morrison, were appointed to meet the following morning to decide upon the best course for the Democrats to pursue. Their decision was to be accepted by the Democratic body.

But now all thought of the Kasson rule was dropped, for, finally, provided it could be carried through, a solution was found for the problem of the high-tariff men. On February 24, Representative Reed reported from the Committee on Rules a resolution which would permit the taking of the Senate Bill from the Speaker's table on a majority vote and would allow on the bill only a vote to non-concur. The resolution read as follows:

Resolved, That during the remainder of the session it shall be in order at any time to move to suspend the rules, which motion shall be decided by a majority vote, to take from the Speaker's table House Bill Number 5538, with Senate amendment thereto, entitled "A bill to reduce internal-revenue taxation", and to declare a disagreement with the Senate amendment to the same, and to ask for a committee of conference thereon, to be composed of five members on the part of the House. If such motion shall fail, the bill shall remain upon the Speaker's table unaffected by the decision of the House upon said motion.[2]

[1] *Courier-Journal*, February 26, 1883.

[2] *Record*, 47th Cong., 2nd Sess., Feb. 24, 1883, p. 3259.

When this proposition came up for discussion Mr. Blackburn, Democratic member of the Committee on Rules, voiced indignant opposition, denying that the proposition submitted could be construed as a rule in that it gave an unknown, unprecedented power applying to a single motion on a single bill. "It is," he said, "what Blackstone has denominated, not a rule, not a law, but a sentence pronounced, and that without a hearing." [1] When Mr. Reed first brought up the resolution, Mr. Blackburn made a point of order against it but was not heard at the time, his point of order having been reserved. This point of order was a matter of considerable embarrassment to Speaker Kiefer. He evaded it the first time by reserving it till a later time. When Mr. Blackburn brought it up again, he ruled it out on the ground that it was made too late. The point of order offered was that the proposed rule was no rule at all but simply a revolutionary party expedient. Furthermore, he called attention to the fact that a conference was asked on a bill not one sentence of which after the enacting clause was ever in the House before. Finally, he dared the Republicans to allow a vote to concur. When Mr. Carlisle asked Mr. Reed if he would allow an amendment to his rule, Mr. Reed shouted "No!" [2] The Republicans said little to the vigorous Democratic attack. Mr. Reed defended his resolution on the ground that in the last days of the session the people were demanding a reduction of the tariff. He implied rather than stated, that his move was for the purpose of satisfying that demand.

> Whenever [he said] gentlemen complain against us and say that this rule is a violation of the ordinary principles of parliamentary law, I say to them it is true that the ordinary principles of parliamentary law look toward an agreement and not a dis-

[1] *Record*, 47th Cong., 2nd Sess., Feb. 26, 1883, p. 3305 *et seq.*

[2] *Courier-Journal*, February 27, 1883.

agreement between the two Houses. But in a bill like this, containing as many items and carrying as many business interests as this does, it . . . has been always the custom to have the voice of difference settled in the quiet of a conference committee.[1]

There was an evening session of the House on February 26, the day Mr. Blackburn's point of order was made. There was at this session a large attendance on the floor and in the galleries. Mr. Blackburn appealed from the decision of the Chair overruling his point of order, but his appeal was laid on the table. Mr. Carlisle moved that the alleged rule be recommitted with instructions that when it was reported again it should be in such shape as to allow the House to concur as well as non-concur if the members were so inclined. This motion the Speaker declared out of order.[2]

For a day or two there was much doubt in the Republican ranks as to whether this audacious resolution could be made to pass. In more ways than one it was quite unprecedented. It provided for a suspension of rules by a majority of the members instead of the long-established two-thirds; it authorized a motion to non-concur but not one to concur; and in case of the failure of the motion, it sent the bill back to the Speaker's table from which it could not be removed except by a two-thirds vote. It was most ingenious in its safeguarding of the protectionist leaders. The only question was whether such a measure could be passed in a House that seemed all too ready to concur in the Senate bill. On the 26th of February a vote was taken but was lost by lack of a quorum, nearly all of those opposed to the rule not voting. The result was as follows: 120 yeas, 20 nays, and

[1] *Record*, 47th Cong., 2nd Sess., Feb. 26, 1883, p. 3317.

[2] *Courier-Journal*, February 27, 1883; *Record*, 47th Cong., 2nd Sess., p. 3312.

151 not voting.[1] A quorum had not voted.[2] On the following day a vote was again taken with the result that there were 129 yeas, 22 nays, and 140 not voting. A quorum had voted and the Reed rule was declared adopted.[3] According to the *New York Evening Post* of February 27, the result was as unexpected to the Republicans as to the Democrats. The rule was passed, said this paper, by a revolt in the Democratic ranks against withholding votes. Every Democratic vote against the rule was equivalent to a vote for the rule, as it contributed to make the quorum.

It would seem that more effective opposition might have been put forward, especially by the Democrats. But they had been badly disorganized throughout the session. Their caucuses had shown that they could do nothing as a party in the House. The last elections had given them a majority for the next Congress and the coming contest for the Speakership caused jealousy and deepened conflicting interests among the party leaders. Some of them even favored protection. And, finally, no Democrats wished their party to be saddled with the responsibility of defeating a bill that was, at least ostensibly, for tariff reduction. This consideration also influenced the Republicans of the opposition and helped to make them amenable to party discipline. Although the opposition was strong it could not hope to summon a two-thirds vote in order to suspend the rules and take the

[1] *Record*, 47th Cong., 2nd Sess., p. 3317.

[2] This was before the day when Speaker Reed made his famous decision establishing in practice that to do business in the House a quorum voting was not necessary if there was a quorum actually present. See Hinds, vol. iv, secs. 2904, 2932; *Record*, 51st Cong., 1st Sess., Feb. 17, 1890, p. 1915. This decision of Speaker Reed's was afterwards sustained by the United States Supreme Court. See U. S. *v.* Ballin, 144 U. S., p. 1. In 1883 the presence of a quorum was determined by the number of votes cast and not by the number of members in the room.

[3] *Record*, 47th Cong., 2nd Sess., p. 3335.

bill from the Speaker's table.[1] Even if they could have done this they knew that no one of them could have gained recognition from the Speaker to put such a motion. There would either be a conference as the protectionist leaders wanted or there would be no tariff bill passed.

The question had already arisen concerning the Constitutional right of the Senate practically to originate a revenue bill. In the Republican caucus described by the *Courier-Journal* on February 23, Mr. Haskell of Kansas was reported to have moved that the House adopt a resolution stating that the action of the Senate in originating a revenue bill was unconstitutional and asking the Senate to agree to the appointment of a conference committee which should have the power to report upon this constitutional point and also upon the Tariff Bill. If such a resolution could properly have been adopted it would have provided a means of taking the Senate bill from the Speaker's table. However, Mr. Kelley said that a conference committee could not consider a bill that had never been considered by the House unless the House first voted to non-concur with it. Therefore, as the main purpose at the time was to find a way to take the Senate bill from the Speaker's table, Mr. Haskell's motion including the constitutional question was given little consideration.

Now, before the Senate bill was taken from the Speaker's table and before any motion was made either to concur or non-concur, a resolution was passed instructing the House conferees, in case they should be appointed, to consider the constitutional question, bring the objections of the House before the committee of conference, and, if necessary, make a report to the House.[2] This resolution embodying a strong

[1] House bills returned with Senate amendments go to the Speaker's table. In 1883 they could be reached only in their regular order. For history of this procedure, see *infra*, p. 135.

[2] *Record*, 47th Cong., 2nd Sess., February 27, 1883, pp. 3340-3349.

assertion of the rights of the House, made possible a silent acquiescence in the Senate action if the House conferees should think it unnecessary to press the point. It was quite evident at this time that the deciding factor in the decision of the House conferees as to this necessity would depend upon whether or not they could get the Senate committee of conference to agree to the kind of tariff bill they wanted. The resolution of instruction, it was charged by several Democratic Senators who later opposed the conference report in the Senate, was used by the Republican leaders as a weapon in the conference committee.[1] As matters turned out it was not "necessary" for the House conferees to make any report on the constitutional question to the House. This means, of course, that the constitutional question was waived in order that a tariff bill might be passed.

Immediately after this resolution was passed, on the motion of Mr. Kelley, the Senate bill was taken from the Speaker's table, a disagreement with the Senate amendments was declared, and a conference thereon asked of the Senate.[2] The Reed Rule had proved effective in providing a solution for the parliamentary difficulties of taking the bill from the Speaker's table without a two-thirds vote to suspend the rules in order to do it and of getting it to a committee of conference without risking a vote to concur. The constitutional question had also been disposed of in a more or less satisfactory manner. Interest was now centered on the naming of the Committees of conference of the two Houses and on speculation as to what would be the results of their sessions.

Speaker Kiefer appointed as House conferees Represen-

[1] See *infra*, p. 129.

[2] *Record*, 47th Cong., 2nd Sess., February 27, 1883, p. 3351.

tatives Kelley, McKinley, Haskell, Randall and Carlisle. Mr. Randall declined to act, saying that he thought he could best serve his State and the great industries by not being one of the conference committee. Mr. Morrison curtly refused the honor when it was proffered him, declining to be second choice, and Mr. Tucker of Virginia when asked said he did not want to be third choice.[1] This left only one other member of the Ways and Means Committee who was not already on the conference committee who had not been elected to Congress as a Republican. This was Emory Speer, who was an Independent Democrat and not considered by the regular Democrats as their representative. Emory Speer was appointed as the other minority member of the House committee of conference.[2]

On the same day the Senate granted the request of the House for a conference and Senators Morrill, Sherman, Aldrich, Bayard and Beck were appointed as Senate conferees.[3] On the following day, however, the Senate had become aware of the action the House had taken in passing the resolution of instruction concerning the constitutional question, and Senator Garland,[4] of Arkansas, moved to reconsider the vote by which the Senate agreed to a conference. A long discussion of precedents eventuated in the passage of a resolution to the effect that the Conference should be full and free,[5] and that if it proved not to be so, the Senate conferees should retire and report the matter to

[1] *Record*, 47th Cong., 2nd Sess., February 27, 1883, p. 3356; Feb. 28, p. 3409.

[2] See *Courier-Journal*, February 28, 1883; *Record*, 47th Cong., 2nd Sess., p. 3428.

[3] *Record*, 47th Cong., 2nd Sess., February 27, 1883, pp. 3328-3334.

[4] *Record*, 47th Cong., 2nd Sess., p. 3367.

[5] See *supra*, pp. 13, 14.

the Senate.[1] Senator Morrill promised that he would consent to no "jugglery" such as some seemed to anticipate, whereby, by the instruction of the House, all but the internal-revenue section of the bill should be struck out.

Although conferences have not been open to the public as represented by the newspapermen, these latter have been given on the whole somewhat detailed reports for publication in regard to the progress of conferences on important bills. The press has printed such reports of tariff conferences for many years. The tariff conference of 1883 was reported by several papers, among them the *New York Times,* the *New York Evening Post,* the *New York World,* and especially Henry Watterson's paper, the *Louisville Courier-Journal.* According to the last named paper, the Democrats in the House told Speaker Kiefer that they wanted but one Democrat on the conference committee. They wanted him only so that he could tell them the "inside grinding of the machine." As it turned out, Representative Carlisle was the only regular Democrat who served throughout in either of the two committees. He at first objected, but yielded to the persuasion of his friends and stayed.[2] The correspondent of the *Courier-Journal* had his account of the conference meetings directly from Mr. Carlisle.

At the first meeting of the conference committee, on April 30, Mr. Kelley, Chairman of the House conference committee, and his Republican associates were inclined to ignore the resolution of the House which raised the constitutional question, but Mr. Carlisle pressed it and they had finally to present it to the Senate Committee. Mr. Kelley did so in an apologetic manner as if to say, "Gentlemen, the House told us to present this question, but there is nothing in it."

[1] *Record,* 47th Cong., 2nd Sess., pp. 3374-3376.

[2] *Courier-Journal,* February 28, 1883.

Mr. McKinley also made a short speech in which he said the committee would not insist on the point made by the House. Senator Bayard, however, informed the committee that under the resolution passed by the Senate the day before there was no course open to the Senate committee except to retire and report to the Senate. He offered a resolution to that effect which Senator Beck supported in a speech. Sherman, Morrill and Aldrich made speeches against this resolution and it was lost by the Republican vote. Thereupon Senators Beck and Bayard withdrew from the conference, announcing first that they would on the next day appeal to the open Senate.[1]

On March 1, Senator Bayard made a statement to the Senate concerning the meetings of the Conference Committee. He said that he and Senator Beck had found that the House conferees were instructed and that the Conference was not full and free. He reminded the Senate of the resolution passed relative to such a contingency, but Senator Morrill explained that the Senate was bound to accept only what the House had sent them, namely, a four-line resolution to non-concur and request a conference. His opinion prevailed and Senators Bayard and Beck asked leave to withdraw, which privilege was granted them after a yea and nay vote was taken. There was some difficulty in finding Democratic Senators to replace them.[2]

An informal meeting[3] of the conferees was held that morning but no action was taken, owing to the fact that there were no Democratic members of the Senate committee present. They adjourned to await the action of the Senate in filling the vacancies. At twelve o'clock they were still

[1] *Courier-Journal*, March 1, 1883.

[2] *Record*, 47th Cong., 2nd Sess., March 1, 1883, pp. 3454-3458.

[3] The whole account of the meetings of the conferees on this day, March 1, is taken from the *Courier-Journal* of March 2, 1883.

unfilled and the conference again met, a Republican member saying that they would go on with the bill regardless of the vacancies and that they would submit their conclusions to the two Houses. Representative Carlisle, however, raised a point of order that the committee could not proceed to a consideration of the business with which it was charged unless each body was fully represented; that in the absence of two members on the part of the Senate the committee would not be a full conference. After some discussion Senator Morrill, Chairman of the Senate Committee and acting Chairman of the meeting, sustained the point of order and the committee adjourned subject to the call of the Chair.

Those present at the meeting which was adjourned were Senators Morrill, Sherman and Aldrich, and Representatives Kelley, McKinley, Haskell, Carlisle and Speer. President *pro tempore* Davis of the Senate first appointed Senators Voorhees and Macpherson. The latter begged to decline because he was not in accord with his Democratic colleagues on the tariff question. He was excused and the President appointed Mr. Harris, who immediately announced that he was in accord with Bayard and Beck. When Senator Voorhees declined, the President seized the roll-call and began reading aloud the names of Democratic Senators, and as fast as he read their names the Democrats would jump up from their seats and decline. Then assuming that no Democratic Senator would serve on the committee the President appointed Senators Ingalls and Mahone, the first a Republican and the latter a Readjuster. Senator Ingalls declined, as likewise did Miller, from California. Finally Senator McDill, a low-tariff Republican from Iowa, was appointed and consented to serve. The Senate committee was now complete [1] and it proceeded to hold a prolonged session last-

[1] *Record*, 47th Cong., 2nd Sess., pp. 3458, 3463, 3466, 3467. In Tariff conferences in later years the majority members have generally arranged the rates to suit their own party or themselves and have called in the minority members only after the bill was completed. See *infra*, chap. vii.

ing through the afternoon and evening, adjourning at midnight to meet at nine-thirty the next day.

At the time of adjournment, almost all the important points in controversy were left unadjusted. The principal ones of these were iron, Bessemer steel and steel rails, wool, cotton, sugar and earthenware. The high-protectionists had made concessions throughout the consideration of the bill, although on iron and woolen manufactures there was an effort made to hold the rates up pretty nearly to those of the House bill which had never reached a vote. In the conference Senator Sherman made an earnest speech urging that the committee accede to the wishes of the House members. He said the bill before them was practically a Senate bill and that therefore it was only fair that the right of the House members to insist on certain modifications be recognized by the Senate committee.

It was not all plain sailing even for the Republican members of the conference committee. On certain rates they were so divided among themselves, high-protectionists as they were, all but one, that for a time it looked as though there could be no agreement among them. Senator Sherman, in his "Recollections,"[1] scores the manufacturers "who regarded all articles which they purchased as raw material, on which they wished the lowest possible rate of duty, or none at all, and their work as the finished article, on which they wished the highest rate of duty." Ohio, Sherman's state, furnished much "raw material" both in wool and in iron. Senator Sherman had succeeded in the Senate itself in raising the duty on pig iron from six dollars per ton to six dollars and fifty cents, and in the Conference Committee to six dollars and seventy-two cents. However, his efforts, combined with those of Representative McKinley, were powerless to induce the Conference Com-

[1] P. 852.

mittee to increase the duty on wool. Thus it came about that when the Conference Report was presented to the two Houses these two names, Sherman's and McKinley's, were not affixed to it.

All through the time of the sessions of the conference committee, representatives of manufacturing interests had haunted the corridors leading to the committee room of the Senate Committee on Finance, where the meetings were held.[1] On March 2 the word went forth at noon that there would be a report from the conference committee that day. The correspondent of the *Courier-Journal* took his place among the anxiously waiting lobbyists, like them, ready to seize upon the first emerging member of the conference who was likely to give any information as to the conclusions reached. The correspondent was rewarded by the appearance of Mr. Carlisle who, as usual, gave him an account of the action of the committee.[2]

To give such information was one of the principal reasons why Mr. Carlisle had consented to serve on the conference, as he knew perfectly well that he could not influence the tariff rates. He was the only regular Democratic member of the conference and he did not sign the conference report. The Congressional Record gives the following names as having been signed to the Report of the Conference Committee: W. D. Kelley, D. C. Haskell, Emory Speer, managers on the part of the House, and Justin S. Morrill, N. W. Aldrich, James W. McDill and William Mahone, managers on the part of the Senate.[3] All of the managers who signed

[1] The *Courier-Journal* of March 1 said that the hotels were crowded with the representatives of "infant industries" from New England. Cots had been requisitioned at the Ebbitt, Riggs and other leading hotels. The visitors were said to be hard at work sending for and going to see friends who had influence with the members of the conference committee.

[2] *Courier-Journal*, March 3, 1883.

[3] See *Record*, 47th Cong., 2nd Sess., March 3, 1883, p. 3722.

were Republicans except Emory Speer, who was an Independent Democrat from Georgia and who voted with the protectionists,[1] and William Mahone of Virginia, who was a Readjuster[2] and was also a protectionist. All of the Republican members of the conference were in favor of high protection except Senator McDill from Iowa.

The conference report brought in comprised a new bill embodying both provisions for reduction of internal revenue taxes and provisions for tariff revision. Examination of the report shows that the managers did increase rates on several important articles above the rates voted by the Senate and even above those proposed in the House bill that was never approved by that body but was taken as a basis of compromise with the Senate bill. Many and long were the speeches in opposition to the report when it reached the Senate during the crowded night session of March 2. There was a general outburst of indignation from the Democrats.[3]

"I aver," said Senator Beck, "and the silence of the four or five or whatever the number who agreed to this report gives consent to the truth of my statement, that they have imposed an increased tax of fifty per cent on all the iron ore that comes into this country beyond what either the House or the Senate had imposed, and when the House and Senate were agreed." He proceeded down the list: rates on earthen, stone, and crockery ware were increased from fifty cents to sixty cents, on bottles from thirty per cent to one hundred per cent, on pig-iron from six dollars and fifty cents per ton to six dollars and seventy-two cents, on steel railway bars from fifteen dollars and sixty-eight cents per ton in the Senate, fifteen dollars in the House, to seventeen dollars in the Conference Report, according to last year's importations

[1] *Courier-Journal*, March 2, 1883.

[2] See *Biographical Congressional Directory*, Washington, 1913, p. 843.

[3] See *Record*, 47th Cong., 2nd Sess., March 3, 1883, p. 3576 *et seq.*

$400,000 over the customs the House bill would provide and $264,000 more than the Senate bill would provide on that one item. So he continued through several more items of the iron schedule. Senator Bayard pointed to another clause of the bill presented in the Conference Report as a radical departure with no precedent in any bill that had passed either House. This clause provided that if in its classification two or more rates of duty should be applicable to any imported article it should be classified under the highest of such rates.

Senator Bayard could not forget that the House conferees were instructed with regard to the constitutional question. According to him the conference had "a halter around its neck and the rope was in the hands of the chairman of the House conferees." [1] He referred to the charge made by Democratic Senators and Representatives alike that the resolution of instruction adopted by the House permitted its conferees to insist if necessary upon the House objections to the constitutional right of the Senate practically to originate a tariff bill. The only necessity which could arise would be the refusal of the Senate conferees to agree upon rates desirable to the high-protectionists of the House conference committee. According to the version of Senator Maxey, of Texas, the House conferees were admonished, "If pig-iron goes up, the amendment of the Senate will be constitutional; if pig-iron goes down, it will be unconstitutional." [2]

Senator Vance summed it all up in the following words:

It was evident to all those who were versed in our proceedings and have served long in this Chamber that the attainment of a conference committee was the object from the very beginning.

[1] *Record*, 47th Cong., 2nd Sess., p. 3582.

[2] *Record*, 47th Cong., 2nd Sess., p. 3580.

The manner in which these bills were started simultaneously in the two Houses, the manner in which one House stopped its bill and the other House kept on, the manner in which the rules of one House were changed so as to enable this conference to be attained and the conference secured in the manner in which it was—all these things indicated very plainly that there was to be an attempt to meet trying circumstances in a manner that the public would not have its usual insight into.[1]

The rhetorical weakness of Senator Vance's ending is consistent with the general anticlimax of his accusation. His opening phrases lead one to expect an exposure of a deeply-laid plot worked out in all its details with consummate skill and cunning. Perhaps he meant, when he began, to work up to some such conclusion but in the end he who knew them well could accuse them only of seeking to avoid the light of public discussion. It was lame but undoubtedly accurate.[2]

[1] *Record*, 47th Cong., 2nd Sess., pp. 3584, 3585.

[2] Commenting on a speech by Mr. Blackburn in the House, making a most vigorous attack upon the conference report, condemning it for the same reasons voiced in the Senate, Stanwood, in *American Tariff Controversies*, in a way justifies the action of the Republicans in 1883. He says in this connection, vol. ii, p. 213 *et seq.*

"It would be useless to deny that there was much truth in Mr. Blackburn's assertions. Yet the Republicans who, in debate, were too shrewd to give the reasons for their action or to defend the principle upon which their new 'rule' was based, might have admitted the accuracy of all that he said, and have justified themselves, nevertheless. They had a majority in Congress; the Press was Republican; they were responsible for the administration. They would be held accountable for all legislation. They were not satisfied with the bill as it passed the Senate. A few of them, uniting with the Democrats, might form a temporary majority in favor of the bill. But in that case it would not be a Republican bill, and the result would be that they would be answerable as a party for a measure of which a majority of them disapproved."

"Moreover, the Senate bill was confessedly a crude piece of legislation. The Senate itself recalled the bill from the House, in order to correct several important clerical errors. There were many inconsistencies and

The Senate on March 2 adopted the conference report by the very close vote of thirty-two to thirty-one, thirteen Senators being absent.[1] Senator Sherman said in his "Recollections"[2] that he had always regretted that he did not defeat it by voting with the Democrats, but at the time he did not feel justified in denying the relief from revenue taxation which the bill afforded to the people.[3]

The report was taken up in the House on March 3. Several points of order were offered to it, only to be overruled by Speaker Kiefer. Then, as a method of obstruction, the Democrats demanded the reading of the whole report, including the full text of the bill. This report covers almost ten of the broad pages of the *Congressional Record,* in fine

even contradictions in its text. A vote to concur would have cut off every opportunity to make amendments without which the administration of the law would have been beset with difficulties and its interpretation would have led to contrary decisions and expensive litigation. Possibly this last consideration would not have controlled the Republicans but for the fact that they were not satisfied with the Senate bill. That was their real motive. They had a choice between adopting an extraordinary means of making it satisfactory, or of abandoning the measure and giving up the power to a Democratic House of Representatives already elected, the term of which would begin on the fourth of March. They chose the extraordinary measure. A somewhat similar situation confronted the Democratic party eleven years afterward. They were perhaps not strong enough to adopt a course corresponding to that of the Republicans in 1883; but whether their action was dictated by preference or by necessity they became politically responsible for a tariff act which represented the views of a mere handful of their own party. In a party sense it would have been vastly better policy if they had coerced the minority into submission, or, failing in that, had suffered the bill to be defeated. So, in 1883, the Republicans did wisely in insisting that the tariff should be one which they were willing to defend. The people quickly forgot by what means its passage was secured."

[1] *Record,* 47th Cong., 2nd Sess., p. 3586.

[2] *P.* 851.

[3] Stanwood says that the act of 1883 did make a large reduction of internal taxes, the most of which it removed altogether. *Op. cit.,* vol. ii, p. 218.

type; several hours were consumed in its reading. In the two hours of debate that followed, Mr. Carlisle made a speech against the report, which may have influenced some votes.[1] The report was finally adopted by the House by a vote of 152 to 116:[2]

It will be noticed that the names of William McKinley and John Sherman, both members of the conference committee, did not appear among the signatures of the managers to the conference report. Both were from Ohio and both were highly dissatisfied with the duties on wool. Senator Sherman had, however, much against his inclination, voted with his party in the Senate. This in the House McKinley declined to do.[3] He could better afford to make this protest than Sherman because the vote in the House was not nearly so close as that in the Senate.

Newspaper comments of the next day, March 4, included some by the *New York Times,* belittling the accomplishments of the Conference Committee as being not worth all the fuss made in securing it and also congratulating the country on gaining some reduction in taxation. On March 5 the *New York Evening Post* said that the House leaders were now disposed to talk freely, and that they avowed it never to have been their purpose to let the Senate bill pass the House, that the only chance of tariff reduction was through the conference committee. It had been determined that the conference report should not be defeated even if it should be necessary for some of the Ohio men to vote for it. According to the *Post* the strength of the Democratic support to the conference report had been a surprise to Democratic leaders. It was said that there were seven Democrats in the Senate who would have voted for it if necessary. If

[1] *Record*, 47th Cong., 2nd Sess., March 3, 1883, pp. 3724-3727.

[2] *Record*, 47th Cong., 2nd Sess., p. 3942.

[3] *Record*, 47th Cong., 2nd Sess., March 3, 1883, p. 3942.

there is anything in this statement, perhaps Senator Sherman had not, after all, the power to defeat the Tariff Bill of 1883.

The Conference Committee System had at this time been perfected to a degree of efficiency that it could serve the majority party leaders in the two Houses as a means by which they could coerce not only the minority party but a large group of dissenters in their own ranks into permitting a bill to pass which neither house would have agreed to if it had been privileged to vote on parts of it separately. Exactly the same set of circumstances are not to be found on a later occasion but the improved machinery was all put into practice in the years which followed. Of its use, among other things, the next chapter will treat.

CHAPTER VII

Later Developments in the System

In the years since 1883 there have been some important developments in the Conference Committee System. The process, which originated in the House in 1883, of sending bills to conference at an early stage by means of a special resolution reported by the House Committee on Rules has been repeated and developed into a general practice. Further efforts have been made to extend the privileges accorded conference reports to bills carrying with them requests for conference, but these have not been successful. However, a motion for a further conference has come to be considered privileged. The manner of appointing conferees by seniority from majority and minority sections of the committee having the bill in charge has become more fixed and invariable with the passage of time. In most tariff conferences since 1883 the minority members have been excluded from the meetings of the conference until the majority members had arranged the schedules to suit themselves, although this has not been true of conferences on other subjects. Practically all important bills go through the conference stage.

The machinery of control of the managers by the House and the Senate has been strengthened. The main purpose of the new rules of the twentieth century dealing with conference committees has been to provide means to check their power. These rules are few in number although capable of adaptation to most of the questions which arise. The very fact that means of controlling the dangerous power of the managers have been devised adds strength to the Conference Committee System.

The Tariff Bill of 1883 was sent to conference by means of a special resolution reported by the House Committee on Rules, taking it from the Speaker's table out of order by a majority vote to suspend the rules, and permitting on it only a vote to non-concur with the Senate amendments and ask a conference. The parliamentary difficulties the solution to which was found in this special resolution have been recited in the last chapter. All messages and bills from the Senate go, and always have gone, to the Speaker's table, which is to be distinguished from the table of the House [1] on which matters may be laid by vote of the House and thus disposed of adversely. According to the Rules of the revision of 1880, the Speaker's table was one of the calendars of the House and the business there was reached in precisely the same way as the business upon any other calendar, by a motion to proceed to its consideration. When that motion was agreed to by the House, the bills and amendments in their regular order were laid before the House, not for reference to a committee, but for immediate consideration, subject, in the case of Senate bills or Senate amendments to House bills making appropriations or creating liabilities on the part of the Government, to the point of order that they must first have consideration in the Committee of the Whole on the State of the Union. So long as the practice continued, it was in order for any gentleman, when a Senate amendment was taken up from the Speaker's table, to move to concur or non-concur, as the case might be, subject, as has been stated, to the point of order that the proposition should go to the Committee of the Whole on the State of the Union, if it was a proposition which the rules of the House required to go there.[2]

[1] See Hinds, vol. iv, sec. 3089, p. 156 and note 4.

[2] This explanation is taken almost word for word from a decision of Speaker Carlisle made on January 26, 1889, *Record*, 50th Cong., 2nd Sess.,

Considered from the point of view of expedition there was a certain advantage in this rule. Provided the point of order that it should go first to the Committee of the Whole on the State of the Union could be avoided, a bill returned from the Senate with amendments when it was reached on the calendar of the Speaker's table, could be considered at once by the House without an intervening reference to a committee. A vote might then and there be taken on it to concur or to non-concur and ask a conference, or non-concur and agree to the conference asked by the Senate. The most obvious disadvantage was that bills could be reached only in their regular order, except, of course, by a suspension of the rules. But a two-thirds vote was necessary, as it had been since 1822, in order to suspend the rules.[1] However, the Rules of 1880 gave high privilege to certain reports from the Committee on Rules, among them reports on the order of business. As these reports could be adopted by a majority vote, all the conditions were ready for the invention, introduction and adoption of the resolution from the Committee on Rules called the "Reed Rule" of 1883, by which the Tariff Bill of that year was sent to conference. Here was a method not only of reaching bills out of order on the Speaker's table but also of assuring a vote to non-concur and either ask or agree to a conference. Once introduced, the method was made use of on other occasions.

In 1890 the rule respecting disposition of business on the Speaker's table was changed, and Clause 2 of Rule XXIV [2] was adopted. According to this, House bills with Senate

pp. 1216-1220, on a point of order raised in regard to a House bill to reduce taxation returned from the Senate with an amendment in the nature of a substitute and with a request by the Senate for a conference. See Hinds, vol. iv, sec. 3090.

[1] See *House Manual*, section 879, Rule xxvii, clause 1, and explanatory note.

[2] *House Manual*, section 860, p. 390.

amendments not requiring consideration in the Committee of the Whole [1] might be at once disposed of as the House should determine without first going to the appropriate committee; and so also might Senate bills substantially the same as House bills already favorably reported by a committee of the House and not required to be considered in Committee of the Whole, be disposed of in the same manner on motion directed to be made by such committee. In either case when House bills with Senate amendments or Senate bills must, according to the House rules, go to the Committee of the Whole, they must also go to their appropriate committees first. It will readily be seen that this new rule did not do away with the need for special resolutions from the Committee on Rules in order to hasten the process of sending bills to conference. Most of the important House bills with Senate amendments were, under the rule, subject to consideration in the Committee of the Whole. In the next few years a series of rulings applying to such bills sent so many to the Committee of the Whole that the hope of establishing a more lenient interpretation of the rule, an interpretation which would permit more bills to be considered directly by the House, had to be abandoned.[2] In a decision of January 16, 1897, Speaker Reed defined the three conditions needed in order that a Senate bill on the Speaker's table might be taken up for direct action by the House. First it must be of such a nature that the House rules would not require that

[1] House Rule xxiii, clause 3, provides that all motions involving a tax or charge upon the people, all proceedings touching appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in the Committee of the Whole. *House Manual*, section 843, p. 381.

[2] *Record*, 51st Cong., 1st Sess., Sept. 6, 1890, p. 9827; *Record*, 51st Cong., 2nd Sess., March 2, 1891, p. 3689; Hinds, vol. iv, sections 3094, 3095.

it be sent to the Committee of the Whole; second, it must be substantially the same as a House bill already favorably reported by a committee of the House; and, third, it must be so disposed of, if at all, on motion directed to be made by such committee.[1]

It is true that the second and third of these conditions safeguard a bill from the danger which threatened the possibility of a tariff conference in 1883—that of a motion to concur with the Senate substitute, made by a member of the minority and taking precedence over a motion to non-concur made by direction of the appropriate committee. Nevertheless there remained in the case of Senate bills substantially the same as House bills, as in the case of House bills with Senate amendments, the necessity of sending the most important ones to the Committee of the Whole and also to their appropriate standing committees. Furthermore, it will be seen that the rule provided no means of reaching out of order any bills on the Speaker's table. By unanimous consent or by a two-thirds vote to suspend the rules, this could be done, just as before the new rule was adopted. The surer method by far was that of a special resolution from the Committee on Rules. In the fiftieth Congress, Speaker Carlisle, and in the fifty-first Congress, Speaker Reed, appointed the Chairman of the Committee on Ways and Means and the Chairman of Appropriations, with the Speaker as the majority of the Committee on Rules. The three men occupying the most powerful places in the House were thus associated, and formed a masterful steering committee.[2] It can readily be seen with what security the Committee on Rules could offer their special resolutions.

[1] *Record*, 54th Cong., 2nd Sess., Jan. 16, 1897, p. 847; Hinds, vol. iv, sec. 3098, p. 163.

[2] See Luce, Robert, *Legislative Procedure* (Boston and New York, 1922), p. 480.

This new method of procedure was initiated under a Republican régime and was criticized with great vehemence by the Democrats. However, when the Democrats returned to power they continued the system, and, rather than give way to a minority led by Thomas B. Reed, they strengthened it by adding a new provision to the effect that the Speaker might refuse to entertain any dilatory motion following a report of the Committee on Rules.[1] In 1895 Speaker Crisp ruled that the Committee on Rules had jurisdiction to report a resolution for the consideration of a measure even though the effect were to discharge a committee from a matter pending before it.[2]

The Tariff bill of 1894, when the Democrats were in the majority in the House, was sent to conference under a special resolution similar to the Reed Rule. The House bill had been amended drastically by the Senate, one amendment being a provision for an income tax when no such tax had appeared in the House bill. The bill, so amended, passed the Senate July 5, 1894,[3] and a motion was made that a conference be requested with the House. This motion was passed after being contested on a point of order raised by Senator Harris that there had not yet been any disagreeing votes. Senator Edmunds was President *pro tempore* and ruled out the question of order.

When the bill came from the Senate to the House it was committed to the Committee on Ways and Means and reported back by them on July 7 with a recommendation that the House non-concur with the Senate amendments. Furthermore, the Committee on Rules offered a special resolution to the effect that after the passage of the resolution, the

[1] *House Manual*, section 725, p. 314, Rule xi, clause 56, adopted in 1892; Hinds, vol. iv, sec. 4621, p. 951; Luce, *op. cit.*, p. 480.

[2] *House Journal*, 53rd Cong., 3rd Sess., p. 104, Feb. 4, 1895; Hinds, vol. v, sec. 6771.

[3] See *Record*, 53rd Cong., 3nd Sess., pp. 7189-7191-7195.

Committee of the Whole on the State of the Union should be discharged from the further consideration of the bill and that it should be considered in the House, where, after two hours' debate, it should be in order to move to non-concur in the Senate amendments in gross and to agree to a committee of conference asked by the Senate, upon which motion the House should, without further delay or other motion, proceed to vote.[1] On the same day, July 7, a motion was made by Chairman Wilson of the Committee on Ways and Means to non-concur, and this motion was agreed to.

Another example of this special resolution reported by the Committee on Rules was one reported under a Republican régime on March 1, 1901, by Mr. Dalzell of Pennsylvania, a member of that Committee. It read as follows:

> Resolved: That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table, the bill (H. R. 14017) making appropriations for the Army and without intervening motion to move to concur in the Senate amendments thereto in gross; after two hours debate (one hour on each side) the previous question shall be considered as ordered on said motion, and a vote then be had thereon without delay or intervening motion.[2]

This resolution was more detailed than earlier ones in providing for the previous question. The point of order was made that the rule was inoperative under section 2 of Rule XXIV under which the bill would go to the Committee on Military Affairs. Speaker David B. Henderson, of Iowa, ruled out the point, saying that the Committee on Rules was within its rights in practically changing the rules of the House.

On July 9, 1909, the Payne-Aldrich Tariff bill was sent to conference by a similar resolution, which read as follows:

[1] *Record*, 53rd Cong., 2nd Sess., July 7, 1894, p. 7189.

[2] See Hinds, vol. iv, sec. 3111; *Record*, 56th Cong., 2nd Sess., pp. 3331-3337.

Resolved: That the House of Representatives take from the Speaker's table and non-concur in gross in the Senate amendments to House bill No. 1438 entitled an "Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," and agree to the conference asked for by the Senate on the disagreeing votes of the two Houses; and that a committee of conference be appointed forthwith; and said committee shall have authority to join with the Senate committee in renumbering the paragraphs and sections of said bill when finally agreed upon.[1]

Mr. Dalzell explained that the Payne bill, passed by the House on April 10, had come back to the House with 847 amendments. He made a plea for speed in handling the bill and these amendments, contending that the House did not give up its rights in appointing managers but retained its control over them at all times. Mr. Underwood, the minority leader, talked much against taking away the opportunity of the House to debate separate items in the amendments, charging that the Senate had added new features not germane to anything considered by the House. After a debate which covers twenty pages of the *Congressional Record,* the resolution was adopted on the same day it was offered.[2]

In connection with this same bill the Committee on Rules reported a resolution to apply to the consideration of the conference report, making it not subject to the usual point of order.[3] The reason for presenting this resolution was

[1] See *Record,* 61st Cong., 1st Sess., July 9, 1909, p. 4364.

[2] *Record,* 61st Cong., 1st Sess., July 9, 1909, pp. 4364-4384.

[3] "Resolved That immediately on the adoption of this order the House shall proceed to consider the report of the managers of the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 1438) to provide revenue, etc., that none of the provisions of said report shall be subject to a point of order; that general debate shall continue until eight o'clock p. m. of this day, unless sooner concluded, and that immediately upon the conclusion of general debate the previous question shall be considered as ordered on the motion to agree to the report; and that general leave to print on the subjects of this report shall be granted for ten calendar days. *Record,* July 31, 1909, p. 4688.

that the conference committee had admittedly inserted a new provision in respect to leather which Mr. Dalzell defended as necessary in order to bring about agreement among the conferees. After some debate the motion was agreed to.[1]

Such an instance as this and other similar ones served to confirm the growing belief in the tyranny of the Committee on Rules so that the Insurgents of this sixty-first Congress determined to join with the Democrats to break the power of the Committee and with it the power of the Speaker. The Speaker appointed the Committee on Rules, he was a member of it, and he dominated it. Representative Norris succeeded in getting before the House a motion to amend the rules. The rules were then so changed that the Committee on Rules was enlarged from five to ten members, the Speaker was not to be one of them, and the appointment was left to the House, the members to be chosen by majority and minority caucuses. The number of the committee has since been increased to twelve.[2] The Committee on Rules still reports special orders providing times and methods for the consideration of particular bills, but when a party question presents itself in a bill, a small steering committee behind the Committee on Rules, a committee composed of members of the majority party, takes the matter in hand and the Committee on Rules follows its direction in reporting special resolutions.[3]

In 1913 the Underwood Tariff bill was sent to conference by means of such a special resolution. Mr. Underwood had protested vigorously against the special order to send the Payne-Aldrich bill to conference in 1909 when there was a Republican majority. Now that his own party was in the majority, he admittedly asked for the same terms the Republicans had enjoyed. He first asked for unanimous con-

[1] *Record*, July 31, 1909, pp. 4688-4691.

[2] See Luce, *op. cit.*, pp. 482-483.

[3] *Ibid.*, p. 484.

sent to move to non-concur in gross in the Senate amendments to the Tariff bill, to agree to the conference asked for by the Senate, and that the House without further delay proceed to vote on the motion, that if it prevail a committee of conference be appointed without instructions which should have power to join with the Senate committee in renumbering the paragraphs of the bill when finally agreed upon. Objection from minority leader Mann that there were 676 amendments, some of which should be considered separately, denied unanimous consent to Underwood's motion. Later on the same day, September 10, 1913, the Committee on Rules reported a resolution in the same words as the motion and on the next day this resolution was adopted.[1]

A point of order was offered against this resolution from the Committee on Rules on the ground that it would not permit a motion to recommit as provided in clause 4 of Rule XVI,[2] but Speaker Clark ruled it out of order because in this case in agreeing to the conference asked by the Senate the House was given the right of first acting on the conference report [3] and therefore an opportunity to recommit at that time.[4]

However, when in 1916 a resolution was presented by the Committee on Rules to discharge the Committee on Military Affairs from consideration of an Army bill, to disagree to the Senate amendments to the bill, and to ask a conference with the Senate, minority leader Mann again made the same point of order that was made in 1913. This time Speaker Clark sustained it, because, since the House

[1] *Record*, 63rd Cong., 1st Sess., September 10, 1913, pp. 4658, 4706.

[2] *House Manual*, section 765.

[3] Hinds, vol. v, sections 6545-6550, 6609, 6551-6553, 6554-6557, on the possibility of recommitting a bill to conference when one House has acted on it.

[4] *Record*, 63rd Cong., 1st Sess., October 9, 1913, pp. 5520-5522.

on this occasion was to ask the conference, the Senate would have the first right of acting on the conference report and the Senate might reject the conference report, thereby leaving the House no opportunity to recommit it.[1]

This ruling of Speaker Clark, however, did not end the practice of sending bills to conference by means of a special resolution from the Committee on Rules. In order to continue that practice, all that was necessary was to change the wording of the resolution to permit a motion to recommit. This has been done repeatedly. A recent and noteworthy example is to be found in the special resolution from the Committee on Rules by which the House sent the Muscle Shoals bill to conference in 1925. This resolution reads as follows:

"*Resolved,* That the bill H. R. 518, with Senate amendments thereto, be taken from the Speaker's table, the Senate amendments be disagreed to, a conference be requested with the Senate upon the disagreeing votes of the two Houses, and the managers on the part of the House at said conference be appointed without further intervening motion except one motion to recommit."

It will be noticed that provision is made for a motion to recommit. This resolution was the subject of a long debate in the House on January 27, 1925, but was finally adopted on that same day. The debate, which covers twelve pages of the *Congressional Record,* was on the question of the advisability of sending the bill to conference. The question as to whether or not it should be sent by special resolution from the Committee on Rules was not considered.[2]

The special report from the Committee on Rules was the effective method devised for getting bills to conference from the House of Representatives. This method was not used

[1] *Record,* 64th Cong., 1st Sess., April 23, 1916, p. 6761.

[2] *Record,* 68th Cong., 2nd Sess., Jan. 27, pp. 2536-2549.

in the Senate but there was no lack of interest there in the object to be attained. The Senate had already begun before 1883 to send bills back to the House with Senate amendments accompanied by a request for a committee of conference.[1] Just how such a request was to be treated in the practice of the House was a matter of a good deal of interest to parliamentarians, and of considerable importance in the development of the Conference Committee System.

In 1884, just after the Senate had passed amendments to the Merchant Marine bill, Senator Frye moved that the Senate ask a committee of conference with the House on the amendments. An enlightening discussion followed a point of order offered by Senator Harris against this motion on the ground that it was premature as the House had not yet disagreed to the amendments. Senator Edmunds who was in the chair was inclined to overrule the point of order, as he could find authority for such action both in *Jefferson's Manual* and in two cases in recent years, one on the Sundry Civil appropriation bill of 1879 and one on the Tariff bill of 1883.

In the argument that followed an appeal from the decision of the Chair, Senator Sherman said that the only advantage that could be given to this bill by the adoption of this motion would be on the assumption that the House would act on the Senate request for a committee of conference and send to a committee of conference amendments which had never been read or considered by the House. Such a practice as that, once adopted and grafted on the parliamentary law or the practice of the two Houses, would be dangerous and troublesome to the last degree. He felt that after the tariff bill of last year, 1883, both Houses ought to make a stand against the attempt to transfer the entire legislative power of Congress to a committee of three members of each body, selected not according to any fixed rule, but probably accord-

[1] See *supra*, pp. 82, 83.

ing to the favor of the presiding officer or the chairman of the committee that framed the bill, so that a committee selected by two men, one in each House, might frame and pass the most important legislation of Congress. Senator Frye, however, reminded the Senate that without the request for a committee of conference, the bill would, under the iron rule of the House, go to the Committee of the Whole with 136 bills on top of it and would not be reached in nine months' time. The point of order was withdrawn in this case and the conference asked.[1]

At this time there was evidently a belief in the Senate in the efficacy of a Senate request for a conference to give a certain precedence to a bill returned to the House with Senate amendments. Rulings by Speaker Carlisle and Speaker Reed determined that such a request should not give precedence in the House. The ruling of Speaker Carlisle was made in 1886. The bill to prevent the illegal sale of all imitations of dairy products, that is, the oleomargarine bill, had been returned from the Senate with amendments and a request for a conference and had been referred to the Committee on Agriculture. When a report on this bill was submitted from the Committee on Agriculture, Mr. Dingley of Maine made a claim that it was a privileged question. To a point of order raised, Speaker Carlisle said that either House had a right at any stage of its proceedings to ask a conference but that the other House to which the bill was sent must deal with the bill according to its own rules. The bill must nevertheless take its usual course and the request for a conference could not be acceded to until the measure or the amendments were rejected — the bill was not privileged simply because the Senate might choose in advance of a disagreement to ask for a conference.[2]

[1] Hinds, vol. v, sec. 6295; *Record*, 48th Cong., 1st Sess., May 8 and 13, pp. 3974, 4098-4101.

[2] See Hinds, vol. v, sec. 6301, p. 660; *Record*, 49th Cong., 1st Sess., July 22, 1886, pp. 7331, 7332.

In 1897 Speaker Reed made a ruling which affirmed that of Speaker Carlisle of 1886 and which carried the explanation for such a ruling somewhat further than Speaker Carlisle's had. The question had come up as to what should be done with the free-homes bill which had been returned from the Senate with amendments and a request for a conference. Speaker Reed quoted Speaker Carlisle's decision and said that he had not at first agreed with it but that upon further consideration he did. Under the House rule, House bills with Senate amendments might be considered without reference to the appropriate committee when the Senate amendments if they had originated in the House would not have to be considered in the Committee of the Whole on the State of the Union. When, however, they would have been subject to such consideration, then it was the duty of the Chair to refer the bill with the amendments to the appropriate committee. This was the rule of the House.

The present bill, he said, was before the House with Senate amendments which changed its nature sufficiently that it should go to the Committee of the Whole on the State of the Union unless there was something in the Senate request to dispense with the reference. But in order to be binding, such request in courtesy should indicate or come after an absolute disagreement. It was true that either House could ask for it before. He supposed the Senate might pass a bill and ask for a conference upon it without the House having received the bill; and if in that event the measure was not subject to the rule of the House, then the Senate would have a method by which Senators could be more prevalent in the House than the members of the House themselves and dispense with a rule of the House, and that of course could not be tolerated. When the bill reached a stage where there was avowed disagreement between the Houses, then the request for a conference took effect upon

the House and it would then accede to the conference in pursuance of that courtesy which existed between the two Houses. Speaker Reed said he had acted upon these reasons before but thought it well to express them at this time.[1]

In line with what Speaker Reed had said in the decision just recounted, of the right of either House to request a conference at any stage, was a decision on February 27, 1891, when it was ruled that the House could ask for a committee of conference immediately after amending a Senate bill and before the Senate had disagreed to the amendment.[2]

Efforts had been made, years before, to have precedence given to requests for conference.[3] This was, however, never permitted, and as the practice of sending bills to conference through a special resolution reported by the Committee on Rules developed, the efforts ceased. It came to be generally recognized in the House that a motion for a further conference was a privileged question; that is, after a bill had gone to conference and the conferees had reported inability to agree or the House or Senate had disagreed to a conference report made, then a motion to ask a further conference was equally privileged with a report from a conference committee.[4] The principle really was this, that once a bill had reached the conference stage, it was privileged; before that it was not.

The modern methods of getting bills to the conference

[1] See *Record*, 54th Cong., 2nd Sess., January 15, 1897, pp. 833, 834; Hinds, vol. v, sec. 6302, p. 661.

[2] See *Record*, 51st Cong., 2nd Sess., p. 3512, Hinds, vol. v, section 6294. The bill was to provide for placing the American merchant marine on an equality with that of other nations.

[3] See *supra*, pp. 83, 84.

[4] See *Record*, 52nd Cong., 1st Sess., p. 5369, June 17, 1892; Hinds, vol. v, sec. 6586, p. 808. The question came up in regard to the River and Harbor bill of 1892. Speaker Crisp ruled that since there had been an actual disagreement between the Houses the motion was privileged.

stage have been explained. Once the conference is asked, the next matter of importance is that of the appointment of the managers. As has been said several times before, the modern practice in both Houses has been to choose as the majority members of the conference committee the Chairman and the majority member second in seniority on the committee reporting the bill and having it in charge, and as the minority member of the conference committee, the ranking minority member of the committee having the bill in charge. When there has been a larger number on the conference committee, the additional members have been chosen according to position on the same committee. This custom developed gradually and did not become general until late in the nineteenth century.[1] There was opposed to it a belief that the conference committee should reflect the opinion of the body which it represented—that is, the opinion of that body on the particular bill to be considered. This could not be so in every case if the principle of seniority was always followed. In the end, for different reasons, partly through efforts at reform,[2] the principle of seniority has prevailed.

As early as 1877 Speaker Randall adopted the policy of choosing managers for conferences on appropriation bills from the Committee on Appropriations, taking two from the majority side and one from the minority side.[3] It will be

[1] See *supra*, pp. 12, 40, 50, 63.

[2] See *infra*, p. 154.

[3] See Hinds, vol. v, sec. 6342. Thus on the Post-Office appropriation bill, the three conferees of the first conference were all from the Committee on Appropriations. Two of these were reappointed on the second conference, but the new conferee was also from the Appropriations Committee. On the Legislative appropriation bill, the first conferees were all from the Committee on Appropriations. They made a partial report, and were reappointed for the second conference. As they were unable to agree a third conference was ordered. One of the conferees was changed, but he was still from the Committee on Appropriations. (*Journal*, 44th Cong., 2nd Sess., pp. 653, 667, 677.) There are many

remembered that when the Tariff conference of 1883 was in contemplation, predictions were made which were almost entirely accurate, as to the men who would be appointed to serve as managers.[1] There was so much criticism of the appointments when they were made, however, as to suggest that the principle of seniority had not yet been thoroughly established. Senator Sherman's criticism of conference committee practices, made in 1884 and quoted earlier in this chapter, likewise contains no reference to the principle of seniority. There were seven conferees from the House on the Tariff bill of 1894, when the Democrats were in power. The *New York Evening Post* of July 6, 1894, said that Speaker Crisp's announcement of the names of these seven was awaited with great interest, as it was recognized that the personnel of this committee would probably be decisive in determining the conflict between the Senate and the House and in fixing the ultimate form of the tariff act. Mr. Crisp, the article went on to say, was keeping his own counsel and had given no intimation as to the four Democrats whom he would name. There was a growing belief that he would give some surprises. If precedent were followed the Speaker would name the first four members of the Ways and Means Committee, Wilson, McMillin, Turner and Montgomery. But there was a well-founded report current that the names as finally announced would not include McMillin and would include Tarsney. McMillin was next to Wilson on the Committee while Tarsney was the last of the eleven Democratic members, so that the selection would be effected by passing over the heads of six Democrats besides McMillin. If Speaker Crisp did do this, he would be guided by his in-

other examples. For instance in 1878 (*Journal*, 45th Cong., 2nd Sess., pp. 701, 1101, 1264) for two conferences on the Military Academy appropriation bill Speaker Randall reappointed the conferees and they were all from the Committee on Appropriations, which had reported the bill.

[1] See *supra*, p. 106.

terest in the bill rather than by courtesy and tradition. Tarsney's selection would put a Northern Democrat on the committee while an adherence to custom would leave the Democratic conferees solidly Southern. As a matter of fact, the conferees appointed in this case proved to be the traditional ones. McMillin's name was signed to the conference report and not Tarsney's. There were no Northern Democrats on the committee.[1]

The tradition of seniority has not by any means always ruled in the House in the appointment of conferees. There have been times when the Speaker has announced it as the policy of the House that the managers of conferences be so

[1] This *New York Evening Post* of July 6, 1894, also reports an expression of opinion by Representative Tom L. Johnson of Ohio on the importance of the personnel of the conference committee. He said that the tremendous power of the conference committee, understood by few men out of Congress, made the selection of the house conferees all important to the future of the bill. Their power lay in the fact that if the conferees reported several items of agreement the House must pass upon them as a whole and not separately. It was always possible, therefore, so to combine items that those which the House wanted would carry through those which it did not want. Mr. Johnson added that he did not mean to say that the House conferees would thus tie the hands of the House, but having the power to do it, they might have the inclination if there was a strong public pressure to end the struggle and get through with the bill. For that reason it was essential to have House conferees who would represent the House in spirit as well as in letter. With such a committee, said Mr. Johnson, specific reports would be made on sugar, iron, coal, wool, cotton, etc., so that the House could get at each proposition by itself. In short, said Mr. Johnson, since the House was to be in the hands of its conferees, instead of the conferees in the hands of the House, it behooved the House to see at the outset that the conferees were rightly chosen.

There is evident in Mr. Johnson's reasoning, as reported by the *Post*, a certain inconsistency. He said first that the right sort of conference committee would present to the House separate reports on the different items. In this event surely the House would not be in the hands of its conferees. In the next breath, however, he said that since the House was going to be in the hands of its conferees, care should be taken in their choice.

appointed that they represent the main opinions of the House on any particular bill. Such an announcement was made on April 28, 1900, by the Speaker *pro tempore,* Charles H. Grosvenor of Ohio. While the House was considering the bill to carry into effect stipulations of the treaty between the United States and Spain, the question came up as to the probable result of a conference. In answer to a parliamentary inquiry by Mr. John F. Lacey, of Iowa, the Speaker said that the practice of the House was to appoint conference committees on the part of the House to uphold its position. That had been repeatedly done in the House. In the present case, if the House should amend the bill so as to send the whole question to the Court of Claims, as was proposed, it would be the duty of the Chair, who was bound by no rule except courtesy and the practice of the House, to appoint a committee of conference which would stand by the action of the House.[1]

On the conference on the Alaska Civil Government bill of 1900 the managers were selected to represent the opinion of the House on this particular bill as well as the regular majority and minority divisions of the House. This bill had originally been reported in the House by the Committee on the Revision of Laws, although because of the provisions establishing a civil government, the Committee on Territories had an equal claim of jurisdiction. Therefore three members from the Committee on the Revision of Laws and two from the Committee on Territories were appointed. One member from each of these committees represented the minority party in the House.[2]

In 1900 there was an incident that might be taken as a

[1] See Hinds, vol. v, sec. 6340; *Record,* 56th Cong., 1st Sess., April 28, 1900, p. 4824.

[2] See Hinds, vol. v, sec. 6339, p. 686; *Record,* 56th Cong., 1st Sess, May 31, 1900, p. 6305.

case of discipline by the House of its conferees from the Committee on Naval Affairs. The House had instructed its conferees on the Naval Appropriation bill of that year not to agree to any plan for a survey of ocean and lake coasts of the United States. When the report was presented on June 5, it nevertheless included such a survey. After a debate led by Joseph G. Cannon, the report was rejected and a further conference asked with the Senate. Speaker Henderson then appointed an entirely new committee with Cannon as Chairman, all the members of it representing the opinion of the House as expressed in its votes and none being on the Committee on Naval Affairs.[1] On the second conference on the Naval Appropriation bill of 1902 a member of the first conference was displaced so that two out of the three conferees on the part of the House would represent the attitude of the House expressed in a vote on an amendment which had been left in disagreement by the first, partial, conference report.[2]

It will be seen, however, that these instances stand out as exceptions to the general custom, which is that of appointing the senior majority and minority members of the committee having the bill in charge. It is this which makes it so easy for the press to print the names of managers before they are appointed.

From the early days of Congress the Speaker had appointed all committees whether they were standing, select or conference committees, unless by special vote of the House they were chosen in some other way. In the sixty-second Congress in 1911, however, the power of the Speaker to appoint standing committees was taken away from him and the parties agreed to leave it to the leaders of the two sides

[1] *Record*, 56th Cong., 1st Sess., June 5, 1900, pp. 6848-6856; Hinds, vol. v, sec. 6396, p. 705.

[2] See Hinds, vol. v, sec. 6369, p. 692; *Record*, 57th Cong., 1st Sess., June 28, 1902, p. 7607, 7608.

to work out a schedule by which to apportion the majority and minority members of every committee. The Democrats decided to elect in caucus the Committee on Ways and Means and leave it to them to assign the members of all other committees. When the Republicans returned to power in the sixty-sixth Congress they decided to have for this purpose of assigning members of committees a Committee on Committees composed of one man from each state delegation who should have as many votes as there were Republicans in his delegation. The clumsiness of this committee and the lack of responsibility made it almost inevitable, as Luce says,[1] that a strict adherence to the seniority rule be maintained. Under this the Republican who had served longest on a committee became its chairman. It is easy to see how this influenced the make-up of conference committees. The Speaker, who had been shorn of so much of his power, still appointed conference committees, as he had done by rule of the House since 1890 and in practice since the beginning,[2] but he was not likely under the circumstances to depart from the custom of appointing as managers of a conference the senior majority and minority members of the committee which had reported the bill. It was thus partly through efforts at reform of the Speakership that the principle of appointing conferees according to seniority on standing committees became fastened upon the Conference Committee System.

The illustrations given have applied to the customs of the House of Representatives. In 1905 there is a conspicuous example which illustrates the practice of the Senate in regard to appointing managers. The question concerning the appointment of the conferees on the bill for the admission of Oklahoma, Indian Territory, New Mexico and Arizona was

[1] Luce, *Legislative Procedure*, p. 109.

[2] See *House Manual*, sec. 663, p. 290, Rule x, clause 2, and note.

debated February 18.[1] Senator Teller of Colorado thought the parliamentary rule had been that the friends of a measure took charge of it in conference. He would not say that the rule would be that the Chairman of the committee to which the subject properly belonged would not be entitled to be a member of the conference, but he did say that had not been the rule of the Senate as a general thing. There had been exceptions because in the case of many of the bills that came to the Senate no one had very much interest in the amendments. Sometimes there were so many amendments that it would be difficult to say who should be their champions. In such cases undoubtedly the Senate had repeatedly appointed as members of the conference committee those who were opposed to the amendments as well as those in favor of them.

On February 20th the subject was debated again. Senator Arthur P. Gorman held that there was now no question but that conference committees should be so constituted as to represent the views of the Senate on every proposition of amendment made by it. He went on to recite the rule that all committees of the Senate were to be elected[2] by it, except when it was otherwise ordered by unanimous consent. But by unanimous consent the chair practically always appointed the conferees. He knew of no exception to that practice in the last thirty years. But there had grown up another custom to which only rare exceptions were made—that of appointing as conferees the chairman of the committee which had charge of the bill and usually the senior member of the majority group next to him and the Senior Senator on the committee representing the other side of the Chamber. He could point to one or two exceptions, one of them made on a former occasion by the present presiding

[1] *Record*, 58th Cong., 3rd Sess., pp. 2812-2816, 2895-2898.

[2] This is Senate Rule xxiv, see *Senate Manual*, p. 27.

officer, Senator Frye. Senator Gorman would urge Senator Frye to follow in the present his own illustrious example of the former occasion. He reminded the Chair that a single objection would prevent the appointment of conferees by the Chair, but Senator Gorman knew of no instance where any occupant of the Chair had been unfair.[1]

This bill was lost in conference and another was introduced the next year providing for the admission of Oklahoma and Indian Territory. For the conference committee on this bill, Senator Beveridge, chairman of the Committee on Territories, moved that the Chair appoint the managers. Senator Foraker objected to the appointment of conferees in the usual way, saying that as Senator Beveridge did not take the Senate position on the amendment in disagreement between the two Houses, he feared he would not suggest conferees that would suit those who did hold with the majority of the Senate. The matter was allowed to go over for a day and in the meantime Foraker and Beveridge consulted together, with the result that Senator Foraker withdrew his objection. He said he had been assured by Senator Beveridge, the Chairman of the Committee on Territories, that the action of the Senate would be faithfully represented by those who were appointed although they had voted against the main proposition which was to go to conference. Senator Foraker did say that he had had in mind the general rule laid down by parliamentary writers that those who are the friends of a proposition should go to the conference to represent it. He then cited a precedent in the case of the joint resolution upon which the United States intervened in Cuba. On that occasion Senator Lodge had stated the principle that it must be the absolute understanding always that conferees represent the views of the Senate and not their

[1] *Record*, 58th Cong., 3rd Sess., Feb. 20, 1905, pp. 2812-2816, 2895-2898, 3359; Hinds, vol. v, sec. 6529, p. 788.

own views. He added that the Senators in charge of the bill, even if they had voted against the amendments of the Senate, would of course represent the views of the Senate and that the bill should not be taken from the committee in charge of the measure.

Senator Foraker in this case said he was satisfied with Senator Beveridge's assurances. Senator Teller in further protesting that the right of appointment of conferees belonged to the Senate, said the custom had grown up for the chairman of the committee to designate certain members of the committee having charge of the measure to act at the conference—and that the feeling was that to select anyone off the committee would be a reflection on the committee. A conference committee has for its purpose to bring together the two houses, and, in doing so, not to represent the minority of either House but, if possible, the majority. He protested against the feeling of reflection upon the committee if their members were not chosen when they did not represent the majority opinion of the Senate. It was only recently, he said, that the custom had grown up of allowing the chairman of the committee reporting the bill, no matter how hostile he might be, to choose the committee of conference.

As Senator Beveridge had agreed to take Senator Foraker's position that the managers should represent the opinion of the Senate in the conference rather than their own opinions, the Vice-President was by unanimous consent authorized to appoint the managers. He appointed Beveridge, William P. Dillingham of Vermont, and Thomas M. Patterson of Colorado. The first two were the first two men on the Committee on Territories, which had reported the bill. They represented the opinion of the committee as to the statehood of Arizona and New Mexico, an opinion which had not prevailed in the Senate. Mr. Patterson

headed the minority of the Committee on Territories and represented the view which prevailed in the Senate.[1] So in this much-debated case the traditional method of appointment prevailed.

An interesting controversy arose in the Senate over the appointment of conferees in the case of the Muscle Shoals bill of 1925. According to custom Sentor Norris, who was chairman of the Committee on Agriculture and Forestry, the committee which had originally reported the bill, would have been chairman of the Senate managers and Senator McNary who ranked next to Norris on the committee, would also have been a member of the conference committee. The bill reported by Chairman Norris, however, had been voted down and one brought forward by Senator Underwood had been substituted for it, had passed the Senate, and was to be the basis of discussion from the Senate side in the conference to be held. Senator Underwood felt that his bill would not be treated adequately by Norris and McNary and moved that on this account the Senate choose other members who would more completely represent the opinion of the Senate. In his motion he named Senator Keyes of New Hampshire, Senator McKinley of Illinois and Senator Harrison of Mississippi.

In the debate that followed, Senator Simmons protested against thus departing from the custom. He had met the same situation in the previous session in relation to the revenue bill, when the contention of the minority having been adopted by the Senate, he, as ranking member of the minority, had been concerned as to how the bill would fare in conference in the hands of the majority leaders of the committee who were opposed to it. The minority members in that case had come to the conclusion that the wisest course was not to express distrust of the sincerity and good faith

[1] See Hinds, vol. v, sec. 6371, p. 695.

of the majority leaders but to assume as a matter of course that they would discharge their obligation to the Senate and would stand by the final action of the Senate whatever might have been their attitude when the measure was pending. In that case the minority members had made it plain in conversation with Senators and with the representatives of the press that after the conference committee was in session if the regular members of it were not faithful to the conditions of their appointment, they would either make a motion, before the report of the conferees was submitted, to remove them and substitute for them others who were in sympathy with the Senate's action, or wait until they had reported and then, if they had violated their obligation they might send the measure back and ask for the appointment of new conferees. As it turned out, it was necessary to do neither. Senator Simmons cited another example in the case of the publicity of income-tax assessments. Then as now the minority provision had carried, but the bill had been left in conference in the hands of the majority members of the committee and they had supported the action of the Senate, disregarding their former position.

In regard to the revenue bill, Senator Simmons had thought that it was not wise to call in question the good faith of the majority members, especially as they could be removed later if they did violate their obligation. At this point Senator Smoot, who was the majority leader, reminded Simmons that he had at the time made a public statement to the effect that if the time came when he could not support the action of the Senate, he would ask the Senate itself to make a change of conferees.

Senator Underwood replied that the present case was different. In the case of the revenue bill the conferees disagreed with some of the thousands of items; in this case the majority members of the committee were opposed to the

entire bill which had passed the Senate. Furthermore, Senator Smoot had, before he was appointed, given assurance that if he could not agree with the viewpoint of the Senate, he would retire from the conference committee. No such assurance had been given by the majority members, Norris and McNary, of the Committee on Agriculture and Forestry. Senator Underwood then made a general plea against the rigid seniority rule, saying that it was then being waived by the Appropriation Committee which was taking newer members who had come to it from other committees rather than the senior members to act on certain of the appropriation bills.[1] The principle of seniority might fly in the face of the accepted principle [2] which says that the majority party shall be represented by the majority and the prevailing sentiment of the Senate shall be represented. There was no rule requiring that seniority should be observed. It was only custom that had grown up through the years. He did not see how Norris and McNary could wish to serve under the circumstances.

Norris at last spoke. He said first that as a fundamental proposition no one could dispute the fact that in legislative bodies where there was more than one branch and the concurrence of both branches was necessary for the enactment of a law, the principle underlying the appointment of conferees by either body was that those should be appointed

[1] There is much reason for this, as the appropriation bills require expert knowledge which may be more nearly approximated by members who have had recent experience on committees dealing with the subjects for which the money is being appropriated than by those who have been in long service on the Committee on Appropriations.

[2] See Cleaves Manual of the Law and Practice in Regard to Conferences and Conference Reports, section 17, p. 204. This manual is included in the *Rules and Manual of the United States Senate*. It was prepared by Thomas P. Cleaves, Clerk of the Senate Committee on Appropriations under a resolution passed by the Senate, June 6, 1900. *Record*, 56th Cong., 1st Sess., p. 6799.

who represented the action by the body from which they were appointed. However, although he had said to several people that he had no intention of serving on the committee as advocate for a bill against which he was bitterly opposed, when he found the movement afoot to remove him, this movement which showed so much distrust of his honesty, he decided to maintain silence and see how far it would go. He had been talked to by leading Senators and sent for by the Presiding Officer of the Senate, but still he would not disclose his intentions in regard to the appointment. He said that Senator Simmons had brought to light facts in regard to choosing the conferees on the revenue bill which he did not before know — how they debated in secret and finally decided to follow custom, discovering after all that the man they questioned was honorable and had stood by the action of the Senate.

Senator Norris said he could consistently have stood by the action of the Senate on the Muscle Shoals bill. The technical choice presented to the conference committee would be between the provisions of the Ford bill, passed by the House and the Underwood bill, passed by the Senate. In reality, this was not so because the Ford bill was dead, since Ford's offer had been withdrawn. However, since technically there was this choice, he could fight sincerely for the Underwood bill in preference to the Ford bill. The Ford bill granted a lease for one hundred years, the Underwood bill for only fifty years. Furthermore the Underwood bill did not give away seventy-five per cent of the property of the United States at Muscle Shoals by an absolute warranty deed passing title forever, as the Ford bill did. For these reasons the Underwood bill was better than the House bill and as a Senate manager he could defend it in conference. However, he said he never had any intention of accepting the appointment as a Senate manager and would have re-

signed at once if matters had taken their usual course and he had been appointed. As it was the bill had been held up for twenty-two days while conferences were held in House and Senate and White House in an effort to eliminate him and McNary and Smith of South Carolina from the conference committee. He then insisted that Senator Underwood should head the Senate committee. "Let us break up the old custom," he said; "let us make a precedent now; let us not stop after the man you are after has eliminated himself."

But Senator McKellar offered a substitute for Underwood's motion, which substitute named the customary candidates, Norris, McNary, and Smith. In spite of protests on the part of these candidates, the motion was carried and the chance to make a precedent against seniority was lost. Norris and McNary asked unanimous consent to be relieved from service and it was granted. Later Smith resigned, as had Capper, the next in seniority after McNary. Urged by all, Senator Underwood agreed to serve as chairman of the Senate conference committee on the Muscle Shoals bill.[1] The principle of seniority had not been touched although the managers of the conference represented the opinion of the Senate, which was contrary to that of the committee reporting the bill.

The discussion over the appointment of the House conference committee on the Elliott Public Buildings bill of 1926 illustrates the degree to which the members of the House count upon the principle of seniority being observed in the naming of managers. The House bill had passed by a large majority although Mr. Lanham, the ranking Democratic member of the Public Buildings Committee, had

[1] See *Record*, 68th Cong., 2nd Sess., January 28, 1925, pp. 2551-2563 for this debate on the appointment of the conferees. For more on this conference, see *infra*, pp. 211-226.

fought it bitterly. The Senate had amended the bill in such a way as to make it much more in harmony with Mr. Lanham's ideas than with those of the majority of the House. By unanimous consent the House sent the bill to conference. When, on May 7, Speaker Longworth announced the names of the managers, Mr. Lanham's was not among them.[1] At this there was strong protest from the Democratic side. Minority leader Garrett, of Tennessee, remarked on the very unusual procedure. Representative Garner, of Texas, objected because Mr. Elliott, the Chairman of the Public Buildings Committee, had given notice either to Mr. Lanham or to the minority leader that he intended to ask for the appointment of conferees out of the usual order. Speaker Longworth said he had not been advised as to whether or not Mr. Elliott had consulted with the minority leaders but for his own part he thought it much fairer, in the present case where there was substantial difference between the two Houses, that the House conferees should be appointed to represent the views of the House rather than by the traditional method. Garner agreed that that would have been right if notice had been given the opposition before it had agreed to let the bill go to conference by unanimous consent. The Chair admitted Garner's contention to be perfectly reasonable and fair. Although he still held that it would be correct to choose as managers men in sympathy with the House position, yet, under the circumstances, he asked unanimous consent to withdraw the names of the managers who had been appointed. There was no objection and the names were withdrawn. Later, on the same day,[2] the Speaker again announced the names of the conferees and this time the list included the name of Mr. Lanham, ranking minority member of the Public Buildings Committee. On

[1] *Record*, 69th Cong., 1st Sess., May 7, 1926, p. 8904.

[2] *Record*, p. 8930.

May 18, when the conference report was brought in in the House, Mr. Lanham explained that while in conference he had felt it his duty to represent the views of the House rather than his own views.[1] Thus was another victory won for the principle of seniority.[2]

The question has sometimes arisen as to the validity of a conference agreement reached by two out of three of the members of the committee of either House. In 1901 a committee of the Senate refused to meet a committee of the House on the Post Office Appropriation bill because only

[1] *Record*, 69th Cong., 1st Sess., May 18, 1926, p. 9643.

[2] The legislative history of the Federal Reserve Act of 1913, as recounted by Mr. Carter Glass, affords an excellent illustration of the importance of the personnel of the conference committee. For the conference on the differences between the House bill and the Senate substitute for it, the Senate chose nine conferees and the House three. The principles of the House bill were supported by the three House managers, Glass, Korbly and Hayes and their choice was also according to tradition. Glass was the chairman of the House Banking Committee, Korbly the majority member of that committee next in seniority, and Hayes the ranking minority member. Opponents of the House bill fought for the appointment of nine conferees to correspond with the number named by the Senate. This would have brought into the conference committee members favoring many changes in the bill.

The Senate had chosen nine conferees for much the same reason that the House had named three. "As the designation of nine conferees on the House side might have nullified the things for which the House had voted, curiously enough, the naming of three Senate conferees only might have prevented an agreement altogether, since Mr. Hitchcock, the second ranking Democrat on the Senate Banking Committee, had consistently voted with the Republicans on the main questions in issue; and, if named as a conferee, he and Mr. Nelson, the Republican conferee, could have controlled the Senate vote in conference.... Whatever the reason, the Senate named on the conference committee every Democratic member of its banking committee except Mr. Hitchcock. These were Owen, Reed, Pomerene, Shafroth, O'Gorman, and Hollis. The Republican conferees were Bristow, Nelson, and Crawford." See *An Adventure in Constructive Finance* (New York, 1927). This Senate conference committee was one not appointed with respect to seniority on the committee having the bill in charge.

two of the members of the latter committee were present. This treatment was complained of bitterly by the House Chairman of the conference. He said he had never known such discourtesy. On this occasion old and experienced members of the House expressed the opinion that two of the three managers, being a quorum, might participate in a valid conference.[1] This principle has certainly prevailed in many of the tariff conferences of the last forty years.

Majority conferees alone worked out the conference report on the tariff bill of 1894. Representative Wilson, the Chairman of the House Conferees, in answer to criticism on that score, made some explanation to the House of this action. He said that it had been fully recognized and fully expressed by the Republican conferees of the Senate that it was the duty (he did not say right, but duty) of the dominant party in the two Houses through their special conferees, first to try if they could reconcile their own differences before they brought to the attention of the full conference committee their proposed action.[2] On July 12, Senator Hale, a Republican from Maine, had introduced a resolution into the Senate asking for information as to the failure of the Democratic conferees on the tariff to call the Republican members into conference. Senator Hale asserted that the full conference of Democrats and Republicans on the McKinley bill had been called within an hour after the appointment of the managers. He cited Jefferson and Cushing as to the solemnity and importance of a conference. It was ten days now since the conference had been called. The tariff bill was in effect a lost bill. No information could be had by the Republican conferees, Sherman, Allison and Aldrich, as to what was being done in the conference. He

[1] See Hinds, vol. v, sec. 6259, p. 644, *Record*, 56th Cong., 2nd Sess., March 3, 1901, p. 3585.

[2] *Record*, 53rd Cong., 2nd Sess., July 19, 1894, p. 7711.

did not think it was premature or inopportune to call for information from the conference at this time. "We have a right to know and the country has a right to know," he said.

In answer, Senator Voorhees, Democrat from Indiana, disclaimed discourtesy to the Republican conferees. He, himself, thought the whole committee should have been called for a few minutes at first, but it would have been necessary afterwards to proceed as they were doing now. It was well known that differences existed between Democratic party representatives of the two Houses and it was necessary for the party in power and responsibility to agree among its own members before the whole committee met.

To Senator Hale's inquiry as to what good it would do to call in the Republicans then, after the majority had made their decisions, Senator Voorhees replied that it would come from the conferring of intelligent men and he paid a high tribute to Senator Allison's capacity. He admitted that technically there was no precedent of which he knew for proceeding with the conference without calling the minority but asserted that in effect it was always done. He would have called the full committee for a short meeting if he had supposed it to be desired by the Republicans.

To this Senator Hale said that the Republican conferees did not wish to appear to make a complaint. They must have changed their minds on this matter, however, for what they said immediately after this sounded very like complaint. Senator Allison said he thought the course now being pursued by the Democratic conferees was an unusual one. He was loth to suppose that the majority would agree to amendments and withdrawals to the bill and then submit them to the minority for confirmation. The body now in session, that is, this meeting of majority conferees, had no authority from either House. He would not believe that such a discourtesy and violation of the rules was intended.

If such agreements were to be made binding on the majority, the conference had better be dissolved. Senator Aldrich said the members of the conference all had an equal right and an equal authority and that he had called the conference on the McKinley bill the morning after the appointment of the House conferees. They had met every day thereafter and the Democrats had been present. There had been no secret conferences. Senator Sherman, the remaining minority conferee, said a few words in behalf of a full and free conference of all the members.[1]

According to the *New York Evening Post* of the following day, July 14, the Republican complaint was in reality merely an attempt to annoy and harrass the Democratic majority. The Democratic conferees showed their indifference by leaving the Chamber immediately to attend another Democratic meeting held in the usual way. Senator Brice told the correspondent of the *Post* that the Republicans were not sincere in asking for a change in the manner of holding conferences and that there would be not the slightest change made. Senator Aldrich, however, maintained that the Republicans would like to be present as there might be some chance of accomplishing results if they could discuss the paragraphs with the majority instead of waiting until adjustments had been made.

The *New York Evening Post* of July 17 reported that it was generally understood that the Democratic conferees had been unable to reach an agreement. They disagreed on many of the schedules and the House conferees were disposed to hold out for the House bill for which the Senate had substituted its own. On July 18 the *Post* reported that the tariff conferees after a session of fifteen minutes of the

[1] For this discussion, see *Congressional Record*, 53rd Cong., 2nd Sess., July 12, 1894, pp. 7357, 7400-7403, and the *New York Evening Post*, July 13, 1894.

full conference had decided to report a disagreement on the entire bill.

This Tariff conference of 1894 furnishes the first conspicuous example of the exclusion of minority members from the active meetings of the conference committee. There are other examples much nearer our own day. When in September, 1913, Senator LaFollette was appointed with Penrose and Lodge to serve on the tariff conference, the two latter Senators are said to have been indignant. LaFollette had voted with the Democrats and it was said that Chairman Simmons of the Committee on Finance had raised the number of conferees from five to seven in order to make place for LaFollette.[1] The regular Republicans objected strongly to his being considered a representative of the minority. It seems, however, to have made little difference who the minority conferees were, for they were barred from the meetings of the conference committee, the Democrats evincing no intention of calling them in until they should have settled all phases of the tariff dispute. LaFollette seems to have been considerably hurt and he intimated that he considered the procedure of the Democrats unusual. Other members of the committee, however, said the method pursued was in line with precedents established in other tariff revisions. The minority members excluded were Representatives Payne and Fordney, Republicans; Murdock, a Progressive; and Senators LaFollette, Penrose and Lodge, Republicans.[2] The minority members of this conference did not see the report until after it had been entirely completed by the Democrats, even to the point of checking up on clerical errors. There was some speculation as to whether

[1] *New York Times*, September 11, 1913.

[2] *New York Times*, September 12, 1913.

Senator LaFollette would sign the report but in the end he did.[1]

This practice of excluding the minority members from conference meetings seems to have been rather consistently followed in tariff conferences but not in conferences on other bills. In fact there are almost no instances to be found in which the minority conferees have been barred from participation in conferences on any but tariff bills.[2]

The congestion at the end of the session has been repeated in Congress after Congress. The press nearly always comments upon it. For example, in the *New York Times* of March 1, 1891, was the comment that the House of Representatives had reached a stage of business at which it was almost impossible to describe any action taken there for the reason that all of the appropriation bills and nearly all of the other bills that could be considered important had gone over to the Senate or were in conference committees or were expected to be there. From this time on there would be a desperate scramble by the little "jobbers" for precedence and for a chance to get through some offensive measure that would be put through if at all because it was not recognized as objectionable or because some other objectionable measure was to be "kissed" through as a matter of compensation.

The *New York Times* of March 4, 1913, described the "end of session jam." Some appropriation bills were expected to fail, there was a cross-fire of filibusters in the Senate and many conference reports and many disagree-

[1] *New York Times*, September 27 and 30, 1913; *Record*, 63rd Cong., 1st Sess., Sept. 30, 1913, p. 5227, Oct. 2, 1913, p. 5312.

[2] A notable exception is to be found in the conference on the Federal Reserve Bill of 1913. In this conference the Republican members were excluded until the Democratic members had reached agreement—thereby causing much bitterness. Glass, *op. cit.*, p. 214.

ments. In the House the legislative day of Saturday continued over Sunday and Monday and did not end till noon Tuesday when Congress expired. Speaker Clark had sat on the rostrum for nearly twenty hours continuously.[1]

When the usual jam occurred in 1919, President Wilson seemed to be expected to break it up. His room at the capitol was ready for him and a double line of policemen stood at the entrance waiting for him to come till six o'clock. This was on February 26, 1919. That day he did not come but the next day he did. He insisted that he would not call an extra session even if all the appropriation bills failed.[2]

LaFollette in his speech on the oil and gas bill of 1919, said a new rule was needed in the Senate and predicted it would some day be passed. This rule would provide that in the short session all bills originating in either House should be sent to the other House not later than the tenth day of January and that after that period no legislation should be received. Thus a limit would be put upon hasty and ill-considered legislation affecting the public interest. The rule should read somewhat like this: that committees receiving these measures after a reasonable time, a month, five weeks or six weeks, shall report them out. "Now committees can hold back legislation until the eleventh hour and the fifty-ninth minute and yet drive it through, and in the other House under pressure it receives hasty consideration and is sent to conference." [3]

It was thus not altogether the conference committees that LaFollette was blaming for holding back their reports until the last hours of the session when time could not be had for careful examination of them and when the rules requiring that they be printed and allowed to lie ever a day were

[1] *New York Times*, March 5, 1913.

[2] *New York World*, February 28, 1919.

[3] *Record*, 65th Cong., 3rd Sess., March 1, 1919, p. 4714.

suspended. His censure was directed quite as much toward the standing committees that had had the bills in charge and had delayed them. But it is plain from a study of the customs controlling the appointment of managers that the same men who direct the course of a bill through the committee reporting it or to which it is referred are, some of them at least, the members of the conference committee whose report will be given such high privilege when it is presented. It would be strange if they did not many times plan to take advantage of the relaxed rules and sometimes relaxed attention of the last days of the session.

In this last period of development of the Conference Committee System, from 1883 to the present, the powers of the conference committee are not enlarged and its privileges are not extended. However, with the improvement in methods of getting bills to conference and in the almost invariable practice of appointing managers by seniority from the majority and minority groups of the committee having the bills in charge, its foundations have become surer and its structure more coördinated. Less manipulation is required to procure for a bill the advantages of the system than was once the case.

In the meantime methods of controlling the managers have been invented and some of them put into practice. It is of these that the next chapter will treat.

CHAPTER VIII

Later Developments in Methods of Control

From the earliest developments of the power of the conference committees there have always been some parliamentarians who have understood the evils and dangers of the system. In former chapters [1] attention has been called to methods which were worked out from time to time in efforts to control the dangers and to avoid the evils. Just as the conference committee system itself developed through usage and custom before rules defining it, so methods of control were evolved through custom before rules were made to keep the power of the managers within bounds. The most effective of these rules have been adopted within the last ten years. Since the beginning of the twentieth century three limitations have been enforced which establish a fair degree of control over the managers and at the same time grant them sufficient latitude to perform the functions whose necessity created the conference committee system.

One of these rules was adopted by the House in 1902. It required that before a conference report should be considered it should be printed in the *Congressional Record* with an accompanying statement of explanation, except, of course, on any of the six days preceding the end of the session.[2] In 1918, following a scandal in regard to new matter which was included in the conference report on the

[1] See *supra*, p. 75, and p. 95.

[2] See *House Manual* sec. 887, p. 409, Rule xxviii, clause 2, *Record*, 57th Cong., 1st. Sess., May 22, 1902, pp. 5784, 5836.

War Revenue Bill of 1917, the Senate unanimously adopted a rule providing that conferees should not insert in their report matter not committed to them by either House, nor strike from the bill matter agreed to by both houses, and that if they did either of these things, a point of order might be made against the report, and if it was sustained, the report should be recommitted to the committee of conference.[1]

In 1920 the House passed a rule which limited the power of conference committees to agree to Senate amendments to appropriation bills.[2] This rule has probably proved more effective in preventing the evils of conference committee legislation than any other. However, since the rule of 1918 was adopted in the Senate, there have been some battles royal fought and won against conference reports containing new matter. One of these was conducted by Senator La Follette against the Coal and Oil Land Leasing bill of 1919; another was conducted by Senator Norris against the Muscle Shoals bill of 1925.

But before taking up in detail the long series of events which led to the adoption of these rules, it may be well to consider two quite different attempts at control or influence of the conference committee, attempts which have not met with success but which have considerable interest in themselves.

The idea has occurred to some minds that influence, if not control, over the conference committee might be exerted by the President and his cabinet. There is here and there throughout the history of the American Conference Committee System a certain conception of the conference as a stage at which the administration may guide the bill. In the first Congress a conference report admittedly containing new matter was justified on the ground that a member of

[1] *Senate Manual*, Rule xxvii, sec. 2, p. 32. *Infra*, p. 206.

[2] *House Manual*, sec. 810A, p. 358, Rule xx, clause 2. See *infra*, pp. 183-185.

the cabinet had advised the change reported.[1] There was an instance in 1848 when a letter from the solicitor of the Treasury setting forth reasons for the adoption of a certain proviso contained in a conference report was attached to the report.[2]

Another instance in which this conception is found is that of President Taft's unhappy experience with the Payne-Aldrich tariff conference of 1909. He could not guide the bill effectively at that point because of the small difference between the two Houses. He had been persuaded not to interfere at earlier stages and had thus lost his chance. It is true that he did effect some small changes but very unimportant ones compared with the whole tariff bill.[3]

[1] See *supra*, pp. 46, 47.

[2] Hinds, vol. v, sec. 6482, p. 768, *Globe*, 30th Cong., 1st., Sess., p. 774.

[3] President Taft brought some influence to bear on this conference committee in favor of lower rates. He had pledged his party, during the campaign, to undertake a revision of the tariff downward; and it had been given out, apparently on good authority, that he would veto a bill that failed to carry out the pledge. All through the time of debating in both Houses, the President had not interfered. But to the Conference Committee he urged reduction. According to Professor Taussig, "his outspoken attitude strengthened the moderate element, and finally brought about a measure less stultifying in view of his own pledges than had seemed possible when the bill first went to the conference committee."

"His one real victory was on the duty on hides. Free of duty from 1872 to 1897, these had been subjected to a duty of fifteen per cent on the insistent demand of the representatives of the grazing states, especially Montana. The House passed the bill of 1909 with hides free; the Senate, again at the insistence of the grazing states, proposed to restore the duty of fifteen per cent. Instead of a compromise in the shape of a reduced rate such as might have been expected to result from this disagreement, complete abolition of the duty was finally secured. This victory of good sense was clearly due to President Taft, and constituted the one conspicuous fulfillment of his pledge to bring about really lowered duties." From F. W. Taussig, *The Tariff History of the United States*, seventh edition, 1923, New York. pp. 377-378.

La Follette in his *Autobiography* throws some additional light on President Taft's use of his influence with the conference committee. La Follette and other progressives had quoted speeches of Taft's made at

President Wilson probably exerted a good deal of influence upon the conference committee on the Tariff bill of 1913. According to the *New York Times* of September 11, 1913, Wilson was governing the length of his stay at Cornish, New Hampshire, by the tariff conference committee's need of his influence. On September 12, the *Times* told of a long conference between President Wilson, Representative Underwood, the Chairman of the House conferees, and Senator Simmons, Chairman of the Senate conferees on the Tariff bill, held in Washington on September 11, just before the President left for Cornish. The *Times* of September 20 reported that through the influence of President Wilson, the lobbyists for the usual "interests" were not

Milwaukee, Des Moines, and Kansas City and had interpreted his campaign pledges to mean revision downward. While the bill was in conference La Follette was at the White House one day when President Taft asked him what he should do with the tariff bill. To this La Follette answered that he should veto it as it was worse than when it passed the House. The President asked, if he found that he could not do that, what changes ought he to insist on in conference. La Follette could not help remembering things the President had said previously against executive interference with the legislative department of the Government. But the country was all wrought up over the tariff question and the President had forgotten his scruples against interference. La Follette sent him a rather lengthy typewritten document giving his views in regard to specific tariff reductions. For this he received a note of thanks from the President.

When it came to bringing influence to bear upon the conference committee, however, La Follette said that the President was very nearly helpless. La Follette thought that the party leaders had deliberately told the President to wait until the conference stage—that that was the strategic point to use his influence. They had not told him of the rules and customs of the two Houses that forbade changes to be made which went outside the differences between the two Houses. The Senate had raised most of the duties which the House had voted. The conference committee could compromise between the two or at the most accept the House rates. It could not fix them lower than the House rates. When this was made clear the President found himself helpless—as La Follette said, betrayed by a ruse into conniving at breaking party pledges.

See La Follette, *Autobiography*, 1914, p. 447, *et seq.*

able even to approach the members of the conference committee. During the House debate on the adoption of the conference report, Representative Moore of Pennsylvania criticized the President rather severely for the part he had taken in initiating and guiding the Tariff bill. Mr. Palmer frankly defended the President's activities in relation to the bill.[1] The truth was that Wilson had worked with the House Committee on Ways and Means and the Senate Committee on Finance from the beginning and knew just what he could do. He made no such mistake as Taft had made.

A recent occasion when this theory of possible Presidential influence on the conference committee was advanced was that of the conference on the Immigration bill of 1924. Many people expected President Coolidge to interfere while the bill was in conference and bring about the elimination of the Japanese exclusion provision. It was said by some that Coolidge really wanted the provision eliminated, by others that he merely wanted the Japanese to think he wanted it eliminated. Whichever was the case, it became definitely understood that he could do nothing about it at the conference stage because the two houses had not disagreed in regard to it.[2]

Other instances might be added to these few and scattered ones. Any real understanding of the conference committee and its relation to the two houses, however, makes plain the improbability of any important development in control and influence of conference committees by the administration. In so far as the administration can work with the committees of the two houses in initiating bills and adding its weight to theirs in pushing them through the various

[1] *Record,* 63rd Cong., 1st Sess., Sept. 30, 1913, pp. 5255-5256. For newspaper accounts of Wilson's activities before the conference stage, see *New York Times,* Jan. 1, Mar. 11, Apr. 6, Apr. 7, Apr. 11, Apr. 30, May 28, June 3, June 7, June 8, June 11.

[2] See *New York Times,* Apr. 20, 27, 28, 29; May 4 and 6, 1924.

legislative stages, it can also work with the conference committee, but there are so many obstacles in the way of this harmonious coöperation between the legislature and executive, obstacles some of them set up deliberately by our Constitution, that little can be hoped for from executive influence upon the conference committee. Certainly the administration can never be expected to control the conference committee.

In 1911 an entirely different attempt at control of the conference committee was made by Senator La Follette with the support of the Progressives. At this time the Progressives held the balance of power in the Senate and they had also much influence in the Democratic House of Representatives. One thing for which the new party stood was publicity in caucus and committee meetings. Since the first conference held in the first Congress [1] no conference committee meetings had ever been open to the public, the representatives of the press, or even to the general membership of the two houses. Senator La Follette although not a member of the Progressive Party was strongly in favor of open conferences. Through his influence the tariff conference on the wool bill and the free list opened its meetings to the representatives of the press. In his *Autobiography* [2] he tells how he discussed the matter with Senator Bailey, a Democrat from Texas, who was also in favor of open committees of all kinds. It was Bailey who made the motion at the conference to have open sessions. After some objections the motion was carried and the doors were opened. The correspondent of the *New York Times* described this conference in some detail [3] and expressed the belief that

[1] See *supra*, p. 42, for an account of this open conference.

[2] P. 299.

[3] The proceedings of this conference committee were simple and informal in the extreme. For this account see the *New York Times* of August 12, 1911, p. 2. For the signatures to the conference report see *Record*, 62nd Cong., 1st Sess., August 12, 1911, p. 3875.

other conferences would be held in the same way. There is no record of any fault found with its open character. La Follette writes of it in his *Autobiography* and he spoke of it with satisfaction on the floor of the Senate.[1] In spite of this apparent general approval, the innovation never was repeated, even by La Follette, although he had the same opportunity in the tariff conference of the following year. The subject of open conferences was dropped after this one experiment.

Really effective control of the conference committee has been in some measure achieved through the development of practices and the adoption of rules making it possible to challenge a conference report on a point of order in either the Senate or the House of Representatives. The evolution of this parliamentary practice in the House of Representatives in the sixties and seventies was followed in a former chapter.[2] It now remains to trace the changes in interpretation of the validity of a point of order in the House and Senate. The practice of ruling out a conference report in the Senate on a point of order that it contained new matter was introduced only with the adoption of the rule of 1918. The changes in the House will be considered first.

On March 3, 1893, Speaker Crisp ruled a conference report out on a point of order that it contained matter not germane either to the original bill of the House or to the amendment of the Senate. There was some debate before the point of order was sustained by the Speaker. He said that the question for the chair to determine was whether the amendment which had been agreed to and reported by the conference committee was germane either to the Senate amendment or to the original bill. He expressed it as the opinion of the Chair that the practice of enlarging the

[1] *Record*, 62nd Cong., 1st Sess., August 15, 1911, p. 3953.

[2] See *supra*, pp. 95, 97-99.

powers of conference committees beyond the strict letter of the rule was wrong. The bill in question was one to protect settlement rights on public lands. The conferees had brought in an amendment giving to the agents appointed by the Department of the Interior to investigate claims under the swamp-land act of 1850, power to administer oaths and compel the attendance of witnesses both on the part of the State and of the United States. This was held to be not germane either to the original bill or to the amendment.[1]

In 1898 Speaker Reed ruled out at least two conference reports because they included matter not germane. The first was on the bill extending the homestead laws and providing for a right of way for a railroad in Alaska. A point of order was made against the report, and during the debate it was developed that among the Senate amendments was a provision relating to the fishery question between Canada and the United States. To this the conferees had added a provision for a commission to consider the differences between Canada and the United States in regard to trade relations. Speaker Reed said he disliked to pass on such matters as this, but that it was a well-established principle that no conference committee could introduce a new subject, one not in dispute between the two houses; that it was evident that everybody in the House realized that the amendment which had been presented was really beyond the power of the conference committee. That being the case and the point of order being made, there was no other course than to sustain it, which the Chair accordingly did.[2]

In the other case the conferees struck out matter agreed to by both houses. The bill under discussion was one to

[1] See Hinds, vol. v, sec. 6408, p. 718, *Record,* 52nd Cong., 2nd Sess., pp. 2573-2578.

[2] Hinds, vol. v, sec. 6410, p. 720, *Record,* 55th Cong., 2nd Sess., p. 4514, May 2, 1898.

amend a charter of the Eckington and Soldiers' Railway Company. A Senate amendment had proposed to extend to other roads a privilege enjoyed by this one. The conferees had added an amendment striking out this extension of privilege to others and also taking away the privilege enjoyed by this one. During the debate it was urged that the conferees had jurisdiction only on the subject of the disagreeing votes, and that the repeal of this privilege was not in disagreement. On the other hand, it was argued that the Senate had introduced the subject-matter by its amendment and that it was proper for the conferees to amend the amendment. Speaker Reed in sustaining the point of order made against this report said that if the idea were adopted that when once the subject-matter was introduced, it was to control, and not the differences between the two bodies, the powers of the conference committee would be likely to be enlarged rather beyond what was intended by the House. The question arose as to what effect this ruling had upon the report, and Speaker Reed said that according to the action of the House on previous occasions, the sustaining of a point of order against a conference report was equivalent to the rejection of the report.[1] In this case, then, a report was ruled out of order by the Speaker because it contained new matter although the new matter was germane to the Senate amendment.

The question sometimes came up, as it had in the case of the Tariff Bill of 1883, as to what was the proper time to make a point of order. On March 3, 1899, Speaker Reed made a ruling in regard to this. He decided that a point of order made after the statement of the conferees had been made and parts of the report had been read, was not taken

[1] Hinds, vol. v, sec. 6410, p. 720; *Record*, 55th Cong., 2nd Sess., p. 6165, June 20, 1898.

at the proper time. Nothing, he said, was better settled than that a point of order must be raised prior to discussion.[1] On May 13, 1902, Speaker Henderson ruled that a point of order against a conference report should be made before the statement was read, since, if the point of order should be sustained, the reading of the statement would be unnecessary.[2] It has been decided that when a conference report has been agreed to, it is too late to raise as a matter of privilege a question as to whether or not the managers have exceeded their authority.[3]

A ruling by Speaker Henderson in 1902 decided against a rather audacious attempt of a conference committee to legislate. A bill for the allowance of certain claims for stores and supplies reported by the Court of Claims was sent to a conference committee. In this case the Senate had amended the House bill by striking out all after the enacting clause and substituting a new text in the nature of a new omnibus bill. This would seem, according to previous rulings, to give very wide authority to the conferees. They so assumed and proceeded to incorporate in their report three entirely new and unrelated items, all of which had before been introduced into the Senate or House as separate bills. A point of order was made against the report by Oscar W. Underwood. Speaker Henderson, in a rather long ruling, dwelt upon the great value of conference committees as a means of reaching agreement between the Houses, but also stressed strongly the necessity of preventing the abuse of their power. He ruled that there could be no doubt whatever in the present case that the point of order should be

[1] The conference report was on the River and Harbor bill and part of it referred to the Nicaragua Canal. See Hinds, vol. v, sec. 6440, p. 749; *Record,* 55th Cong., 3rd Sess., p. 2925, March 3, 1899.

[2] *Record,* 57th Cong., 1st Sess., p. 5366; Hinds, vol. v, sec. 6441, p. 749.

[3] Hinds, vol. v, sec. 6442, p. 750; *Record,* 57th Cong., 1st Sess., pp. 2527-2528.

sustained. Furthermore, he said that the effect of this ruling upon the conference report was exactly the same as rejection.[1]

On June 7, 1902, on motion of Representative Joseph G. Cannon, the House agreed to a concurrent resolution permitting the House managers to include some new appropriations for public buildings in the sundry civil appropriation bill. The Senate agreed to the same resolution on June 18th, 1902.[2] This action shows careful regard for the principle that the conferees must not include new matter in their report.

In 1907 the question again came up in the House as to when a point of order should be reserved. Speaker Cannon ruled that the proper time was after the report was made and before the statement was read. The Senate had passed a bill amending the immigration laws then in force. The House had amended it by striking out all after the enacting clause and, as Speaker Cannon said, by disagreeing with every line, every paragraph and every section of the Senate bill, and had substituted a complete codification and amendment of existing immigration laws and incidentally the labor laws connected therewith, especially those dealing with contract labor.

The Senate disagreed with the House substitute and the whole matter went to conference. The conference report contained a section empowering the President under certain circumstances to refuse to permit citizens of certain countries to enter the United States on passports issued by those countries. This provision was challenged as new matter but Speaker Cannon held that it really related to contract labor

[1] Hinds, vol. v, sec. 6419, p. 728; *Record*, 57th Cong., 1st Sess., pp. 5365-5368, May 13, 1902.

[2] Hinds, vol. v, sec. 6438, p. 748; *Record*, 57th Cong., 1st Sess., pp. 6449, 6450, 6974.

and that the prohibition of contract labor had been most prominent in the House substitute for the Senate bill. Furthermore the fact of amending by substitute threw the whole matter into the hands of the conference committee. An appeal taken from this decision of the Speaker was laid on the table—practically sustaining the ruling.[1] The process of amending by substitute continued to give great power to the conference committee according to the interpretation of the House of Representatives.

In 1911, a point of order made in the House against the conference report on the wool bill on the ground that it contained new matter was overruled by Speaker Clark. In this case again the House bill had been amended in the Senate by striking out all after the enacting clause and substituting a new bill. The Speaker quoted with satisfaction rulings in similar cases made by former Speakers Colfax, Carlisle, Henderson and Cannon, paying special tribute to the attainments of Asher B. Hinds, at that time Representative from Maine, who had been the parliamentarian of Speakers Henderson and Cannon. The point of order had been made by Representative Mann of Illinois, the minority leader.[2]

In 1920 a change was made in the House rules, in connection with the establishment of a national budget, which affected fundamentally the action of conference committees upon appropriation bills. In the three hours of debate given to the question of budget reform as related to the rules, the rule applying to conferences was not considered separately by any of the speakers on either side of the House.[3] And

[1] Hinds, vol. v, sec. 6424, p. 731; *Record*, 59th Cong., 2nd Sess., pp. 3210-3220, Feb. 18, 1907.

[2] *Record*, 62nd Cong., 1st Sess., p. 3913, August 14, 1911. This was the conference report on La Follette's tariff bill.

[3] See *Record*, 66th Cong., 2nd Sess., June 1, 1920, pp. 8108-8121.

yet clause 2 of Rule XX, a new clause added at this time with the purpose of restricting the power of the Senate to amend appropriation bills, very definitely limits the power of House conferees to agree to amendments to appropriation bills. This clause reads as follows:

No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of Clause 2 of Rule XXI if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.[1]

Clause 2 of Rule XXI, referred to in clause 2 of Rule XX, is one which applies to the initiation and amendment of appropriation bills in the House. It reads as follows:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of the amounts of money covered by the bill: Provided, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.[2]

[1] *House Manual,* sec. 810A, p. 358.

[2] *House Manual,* sec. 815, p. 360.

Therefore clause 2 of Rule XX means that no Senate amendment to an appropriation bill shall be agreed to in conference by the House managers if it adds an appropriation for any expenditure not previously authorized by law and not for continuing some public work already begun; nor shall any Senate amendment be agreed to by the House managers if it changes existing law unless the amendment retrenches expenditures. Such Senate amendments can be agreed to only by a separate vote of the House on each amendment. Thus the managers are free to agree to such Senate amendments as change existing law if they are germane to the bill and retrench expenditures, or they are free to agree to any Senate amendment authorizing an expenditure which had been previously authorized by law or which is to continue any public work or object already begun. Thus if the House bill had discontinued some Government activity by refusing supplies to it, the House managers might agree to a Senate amendment which would continue the activity by restoring the supplies, and they might do this without submitting the amendment to a separate vote in the House. On the other hand, if the Senate amendment had created a new activity, or if it had changed existing law by any amendment, however germane it might be to the bill, which did not retrench expenditures; then it must be submitted to a separate vote in the House before the managers would be free to agree to it.[1] In other words, the House managers may not agree to any Senate amendments of a legislative nature unless these amendments retrench expenditures.

The first conference report to which this new rule applied

[1] It may be of interest here to compare with this rule the relations between the French Senate and Chamber of Duputies in the matter of Senate amendments to appropriation bills. See *infra*, p. 247. The far greater power of our Senate as compared with that of the French Senate is most evident.

was that on the District of Columbia appropriation bill of 1921. When the subject was discussed in the House before the bill was sent to conference, Mr. Mapes of Michigan asked the Speaker to decide when those interested in the Senate amendments should raise their point of order. Mr. Garrett of Tennessee also asked what would be done, supposing the House by unanimous consent or special resolution of the Committee on Rules should disagree to all Senate amendments *en bloc* and ask for or agree to a conference with the Senate, if there were Senate amendments obnoxious to the rule above quoted and the conferees without instructions from the House receded from their disagreement and agreed to such amendments. Would the conference report so including such illegal amendments be subject to a point of order as in cases where conferees exceeded their authority and included in their report matters not in disagreement? [1]

Both of these parliamentary inquiries were made before the bill was sent to conference in answer to a request from the Senate. Mr. Davis of Minnesota, who had moved that the House disagree to the Senate amendments and agree to the conference requested by the Senate, suggested that the answer should be that before agreeing to any Senate amendment in violation of clause 2 of Rule XXI the conferees should bring it back to the House for a separate vote upon it.

Speaker Gillett agreed that the interpretation of this new rule was important. He said it was a radical departure from the custom of the House and that it was very obvious that it was going to interfere with past methods of conferences, because, as Mr. Garrett had suggested, it prevented an entirely free conference and what the Senate conferees would do about it, it was impossible to predict. At the same time he felt bound to give, as far as practicable, the interpretation which he thought was intended by the House when

[1] See *Record*, 66th Cong., 3rd Sess., Jan. 22, 1921, p. 1888.

it adopted the rule. He supposed that it might be construed that when the House by unanimous consent disagreed to the Senate amendments and sent the bill to conference, the House thereby waived the provisions of the new rule which said that there should be a separate vote upon each question that was subject to the rule. But the Chair thought that would be a strained interpretation and one which, at least at first, ought not to be adopted. The House ought to have some experience under the rule and let it develop and see what difficulties might arise; at the outset, at least, the language of the rule ought to be followed more strictly. The Chair did not imagine that in the future there would necessarily be a separate vote on every such provision. Very likely, if the House wanted to, it could agree to groups of amendments *en bloc*. At that time, however, the Chair thought the ruling ought to be that if the conferees should agree to an item which was repugnant to this rule, it would so far invalidate the conference report that anybody could make a point of order against it. Therefore, disagreeing by unanimous consent to the Senate amendments and agreeing to the conference asked for by the Senate left the conference report subject to a point of order if the conferees in any respect should agree to an item obnoxious to the rule.[1]

In the discussion that continued Speaker Gillett answered several hypothetical questions respecting the new rule. He said it was his understanding that the conferees could come back and report on separate amendments at any time, that they need not wait until the whole conference report was presented. However, he was not sure whether the conferees could come back with recommendations in regard to amendments of the Senate. Representative Moore of Virginia argued for the advantage of recommendations for the sake of expedition and for guidance of the House.

[1] See *Record*, 66th Cong., 3rd Sess., Jan. 22, 1921, p. 1889 *et seq.*

Representative Wingo of Arkansas suggested that the Speaker was right in confining his ruling to a broad generalization leaving details until questions should arise. Moore conceded as much but thought his question would inevitably have to be faced. In answer to one question, the Speaker said he thought the whole conference report could be invalidated by a point of order against one item of it. Representative Mondell of Wyoming said it would probably become the practice when House conferees found Senate conferees insistent upon an item obnoxious to the rule of the House, for the House conferees to report to the House a disagreement, whereupon the matter would be settled under the rule as to whether or not the conferees were to be authorized to agree to the provision. They would then go back and follow the instructions of the House, whatever they were.

When the report was presented on February 15,[1] Speaker Gillett suggested that that was the time for any points of order to be made. The House managers had brought in besides the regularly required statement explaining[2] the effect of the conference report, a statement of disagreement with certain Senate amendments which violated the new clause of Rule XX. In answer to questions in regard to this statement, the Speaker said he thought the proper procedure to follow was to accept the conference report and then to agree or disagree to each of the amendments in disagreement. These amendments would then be directly before the House for a vote of approval or disapproval and would not be subject to a point of order under the new rule.[3] The new rule applied only to the managers and their action in

[1] *Record,* 66th Cong., 3rd Sess., February 15, 1921, p. 3206.

[2] Required by House Rule xxviii adopted in 1880. See *supra,* p. 102, *House Manual,* sec, 886.

[3] See *Record,* 66th Cong., 3rd Sess., p. 3208 *et seq.,* for this discussion.

conference. After the report was made the managers had nothing more to do, as the House would then act directly upon the Senate amendments which the rule prohibited the conferees from accepting. To be sure, if it chose, the House could authorize its conferees to go back into conference and agree to any of these amendments.

The question then arose as to whether or not the conferees should make recommendations to the House as to the disposal of such Senate amendments as they could not accept. The argument of one of the managers, Representative Crampton, of Michigan, was that as the rule forbade the conferees from agreeing to the amendments, it might by inference make it a questionable practice for them to make recommendations to the House. Furthermore, it was a fair inference that conferees did not entirely disapprove of such amendments as they reported to the House, for if they did so disapprove of an amendment they would not report it.

As it worked out, amendments on which a separate vote was asked were taken up separately and in the discussion the conferees told their individual opinions of them. Then the other amendments were voted upon *en bloc*.[1] In this case all of the amendments were agreed to except two and these were adopted with amendments.[2] Altogether the report, explanation, discussion as to procedure, debating and voting on amendments, covered nineteen pages of the *Congressional Record*.[3]

The *New York Times* of February 21, 1921, said that the new House rules were impeding action on conference reports. That may be so, but neither the rule nor the practice has been changed in the House. With a very few ex-

[1] *Record,* 66th Cong., 3rd Sess., pp. 3218-19.

[2] These amendments of the House were debated in the Senate and agreed to. See *Record,* 66th Cong., 3rd Sess., Feb. 17, 1921, p. 3297.

[3] Feb. 15, 1921, pp. 3203-3222.

ceptions all of the appropriation bills of the sixty-seventh and sixty-eighth Congresses have been agreed to by much the same procedure as that described in the case of the District of Columbia Appropriation Bill of 1921. The House managers present a report of partial agreement. Then such Senate amendments as would if offered in the House violate clause 2 of Rule XXI they report as in disagreement between the Houses. After the House has disposed of the part of the report to which the managers were free to agree, either by accepting or rejecting it, the remaining amendments are taken up in order and disposed of directly by the House without further conference.[1] This is not in defiance of the new rule, which permits the House to authorize the managers to agree to these amendments, for the new rule does not require that agreement be reached, if at all, through the managers. The practice is only a reversion to a simpler and equally effective method of procedure which may be found in use in the early Congresses before the typical American Conference Committee System was in existence.[2] If the House is to take a separate vote on each amendment, it has been found that it might as well announce the result of that vote directly to the Senate as to do so through the mediation of a conference committee.

If the House disagrees to the partial report of the managers, the practice is to reject it rather than recommit it to the conference committee. This was demonstrated to be the better method in the case of the Independent Offices bill of 1922. The partial report was disagreed to and a motion passed to recommit the conference report. It was then de-

[1] This is the practice as given in the *House Manual*, sec. 810A, p. 358. The statement is borne out by a study of the procedure on appropriation bills of the last two Congresses. (*Congressional Record*, sixty-seventh and sixty-eighth Congresses.)

[2] See *supra*, p. 43 and p. 53 for examples.

sired to proceed with a discussion of the amendments disagreed to because they were in violation of clause 2 of Rule XXI, but it was shown that this could not be done because these amendments were legally in conference where they had been sent when the report was recommitted. This was on April 3, 1922. Later, on April 20 and April 25, two other conference reports were disagreed to but each time the report was rejected and a new conference was asked with the Senate. To this new conference each time the House could commit only the partial report, leaving the other amendments for action by the House.[1] This is the method of procedure that has been followed since that time. Sometimes the Senate insists upon some of its amendments left in disagreement by the House managers and asks a further conference. When agreeing to this request for a conference the House then announces its agreement or disagreement with the amendments in question. But still, be it the third, fourth, or any later conference, the House managers must observe the provisions of clause 2 of Rule XX.[2]

Some efforts have been made to get around the provisions of clause 2 of Rule XX. When it was being considered for the first time, in connection with the District of Columbia appropriation bill of 1921, the question was asked whether if the House by unanimous consent sent to conference an appropriation bill with Senate amendments in violation of clause 2 of Rule XXI the managers would be free to agree to any of these Senate amendments. Speaker Gillett ruled

[1] See *Record*, 67th Cong., 2nd Sess., April 3, 1922, p. 4943; April 20, 1922, pp. 5771-5776-5784; April 25, 1922, pp. 5954-5958.

[2] See *Record*, 67th Cong., 2nd Sess., April 3, 1922, p. 4944. Speaker Gillett made this ruling in answer to parliamentary inquiries by Representatives Tilson and Mann, who wished to know whether, since the House by recommitting the conference report had lost possession of the amendments in disagreement by the conferees, the conferees might not now have gained authority to agree to them.

that any such action on the part of the managers would make their report subject to a point of order in the House.[1]

However, the managers may receive such permission through the adoption by the House of a special resolution from the Committee on Rules. Such a special resolution, applying to the Road bill providing federal aid to States, and couched in somewhat indefinite terms, was adopted on October 27, 1921. Representative Campbell of Kansas offered it as a privilege resolution from the Committee on Rules. It read as follows:

> Resolved, That the managers on the part of the House on the committee of conference on the disagreeing votes of the two Houses, on the bill (S. 1072) be, and they are hereby, given specific authority, as provided by clause 2 of Rule XX to agree to an amendment of the Senate providing for an appropriation.[2]

As no specific amendment of the Senate is mentioned in this resolution, it may, of course, permit the managers to agree to any number of such Senate amendments. The rule requires that on every such amendment a separate vote be taken, but from the first, in practice, this has not been carried out. On the District of Columbia appropriation bill of 1921 part of the amendments were agreed to *en bloc*.[3] Taking this fact into consideration, the special resolution from the Committee on Rules may not have any great significance.

The practice of reporting special resolutions from the Committee on Rules in connection with conferences on appropriation bills has not become a general one. The new rule is very generally observed and has inevitably had its effect in restricting the old practice of the Senate of loading

[1] *Record,* 66th Cong., 3rd Sess., Jan. 22, 1921, p. 1889.

[2] See *Record,* 67th Cong., 1st Sess., p. 6897.

[3] See *supra,* p. 189.

appropriation bills with legislative amendments and the old practice of the House managers of agreeing to these amendments.

One more instance of effective opposition in the House to a conference report which included new matter not committed to the conference committee should be recounted before turning to the methods of control developed in the Senate. When on September 13, 1922, the conference report on the Fordney-McCumber Tariff bill was presented in the House, Representative Hamilton Fish, Jr. of New York made the point of order that it included new matter not committed to the conference committee. The new matter was a dye embargo to be in force one or two years at the discretion of the President which both House and Senate had voted down. But there was a complication involved in the emergency tariff act of May, 1921, and the extension by Congress "until otherwise provided by law" of one of its sections constituting a dye and chemical control act, which made it possible for the Republican leaders to contend that the dye embargo in the conference report was justified. Nicholas Longworth led in the defence of the report, Fish and John Garner of Texas in the attack against it. Fish and Garner argued with reason that the words "until otherwise provided by law" simply meant until the permanent tariff law should be enacted. In considering the permanent tariff law both Houses had voted down the dye embargo which the conference report now brought forward.

Speaker Gillett overruled the point of order. He said that the Senate had specifically repealed the dye-embargo provision of the emergency tariff law whereas the House bill had said nothing of it. Since the Senate had made an absolute repeal the conferees were justified in limiting that repeal by allowing the law to remain in effect for one or two years longer according to the discretion of the Presi-

dent. An appeal from the decision of the Chair made by Mr. Fish was laid on the table by a vote of 150 to 147. Later on that same day, however, after a good deal more debate had taken place, Mr. Garner moved to recommit the conference report to the conference committee with instructions to strike out the dye embargo, and by a vote of 177 to 130 this motion was carried.[1] On September 15 the bill was returned with the dye embargo removed.[2] It was then adopted by the House.

Although this recommittal seems to have been revolutionary from the point of view of the Republican party,[3] it has little parliamentary significance. It had always been possible for the House to overrule the decision of the Speaker if the vote could be summoned to do so. In this case there was not a definite refusal to sustain his decision, for an appeal from that decision had been laid on the table. Furthermore the vote to recommit had not quite the same effect as a ruling-out of a report on a point of order. The resolution to recommit specified certain changes that were to be made in the report, whereas when a report is recommitted after being ruled out on a point of order, the whole subject-matter of the report is again turned over to the managers and they may make other changes beside the ones specified in the point of order.[4]

[1] For this point of order, debate and ruling of the Speaker and the motion to recommit, see *Record,* 67th Cong., 2nd Sess., Sept. 13, 1922, pp. 12495-12531.

[2] *Record,* 67th Cong., 2nd Sess., Sept. 15, 1922, p. 12709.

[3] See *New York Times,* Sept. 14, 1922, for an account of the stunned surprise of Chairman Fordney of the Ways and Means Committee.

[4] See *Record,* 67th Cong., 2nd Sess., Sept. 15, 1922, p. 12531. When the report went to the Senate, Senator Simmons of North Carolina made a point of order against it on the ground that in extending the power of the President to apply American valuation to any schedules if it was thought advisable, conferees had introduced new legislation and the bill should be recommitted. Senator Cummins who was presiding officer, although he

Before the adoption of the Rule of 1918 it was not the practice in the Senate to rule out a conference report on a point of order that the managers had introduced new matter not committed to them or had struck out matter agreed to by both Houses. The Senate itself could of course refuse to receive such a report or it could be withdrawn, but the presiding officer consistently refused to sustain a point of order against it. A series of elaborate rulings established this practice.

An instance of withdrawal of a conference report occurred on March 2, 1895. Objection was made in the Senate that the conferees on the Indian appropriation bill had exceeded their authority in bringing into the report matters not in issue between the two Houses. By consent of the Senate the report was withdrawn.[1] In 1897 Vice-President Hobart made a ruling in regard to the making of a point of order against a conference report in the Senate. He said that it would be an unwelcome task if he were obliged to decide as to whether any or every amendment was germane to the original bill or germane to the amendments in either House or both Houses, or whether a conference report contained new and improper or irrelevant matter.

He went on to say that it would be asking the Chair to do what the Senate itself could not do, to amend the conference report. No rule or practice permitted the presiding

was opposed to the bill, overruled the point of order and his ruling was sustained by a large majority of the Senate. President *pro tempore* Cummins said the managers had not introduced new legislation but simply had reached a compromise between the American valuation of the Senate and the foreign valuation of the House. See *Record,* 67th Cong., 2nd Sess., Sept. 18, 1922, p. 12795 and *New York Times,* Sept. 19, 1922. This ruling of President *pro tempore* Cummins was recalled in 1925 during the very serious debate over the point of order on the Muscle Shoals conference report. See *infra,* pp. 213, 214, 219, 224.

[1] Hinds, vol. v, sec. 6432, p. 746; *Record,* 53rd Cong., 3rd Sess., pp. 3057-3059.

officer to annul the action of a conference committee and thus amend it. This seems rather confused. The Vice-President asked further where the bill would go after having been treated thus by a presiding officer so lacking in conscience as to do so. In the case under discussion, the report had been made to the House and accepted and the House conference committee had therefore been discharged.[1] This reason, together with the fact that he was avoiding an unwelcome task, probably explained the attitude of the Vice-President. The Speaker of the House was less unwilling to take responsibility than the Vice-President, since he was used to it and had a great deal more power. This ruling of Vice-President Hobart was quoted on several occasions in the years that followed.

In 1906 Vice-President Fairbanks made a ruling in the Senate which was quoted from time to time during the next dozen years and which was the precedent followed in practically all similar cases which arose during that time. It was to the effect that a point of order would not lie against a conference report. It was a matter for the acceptance or rejection of the Senate. If the Chair sustained or overruled the point of order, it would find itself in the position of determining matters entirely within the control of the Senate.

The Vice-President may have been influenced to some extent in making this ruling by the subject-matter involved. The conference report was on a bill relating to departmental information affecting markets. On its merits the amendment of the conferees was not objectionable. As the bill passed both Houses of Congress it provided a penalty for the disclosure of knowledge and for speculation in matters affected by knowledge which had been acquired in an official capacity. It was discovered by the conferees that members

[1] See *Record*, 55th Cong., 1st Sess., July 21, 1897, pp. 2786, 2787, for Vice-President Hobart's ruling.

of Congress in either House were not included. It was further ascertained that judicial decisions had held repeatedly that members of Congress are not officers of the United States, but are officers of the State governments. Therefore, while doubting their real power, as a committee of conference, to insert a provision including members of Congress, they thought the objects and purposes of the bill clearly demanded such a provision. So they inserted "and Members of Congress" and asked the judgment of the two Houses upon that amendment. On its merits this amendment was a valuable one, although it is true that it might be objectionable even on its merits to some of the members of Congress. The question was settled in this case by the conference report being withdrawn from the Senate for the elimination of the clause included without authority.[1]

In another case occurring a week later than this a point of order was made against the report of a conference committee because the managers had changed the provisions of the bill to which both Houses had agreed. The bill was to provide for the final disposition of the affairs of the five civilized tribes in the Indian Territory. After a good deal of debate the report was withdrawn as in the former case and the objectionable matter eliminated. There seemed to be no thought of asking the Vice-President to sustain the point of order.[2]

In 1906 the Senate several times discussed the question of what should be done with new matter in conference reports. On June 6, a long debate took place. Senators Lodge and Patterson both said that the practice and principle of both Houses was that new matter should not be

[1] Hinds, vol. v, sec. 6427; *Record*, 59th Cong., 1st Sess., March 20, 1906, pp. 4023-4027.

[2] Hinds, vol. v, sec. 6428; *Record*, 59th Cong., 1st Sess., Mar. 28, 1906, pp. 4384, 4385, 4397.

included in a conference report. Both agreed, however, that both Houses could accept new matter if they chose. Senator Hale tried to make clear to the Senate the far-reaching, dangerous, and as he said, disastrous results of the proposition that new matter might be accepted on its merits. Senator Patterson maintained his point that if conferees discovered something that ought to be in the bill to make it effective, they should have the right to suggest it to the two Houses. In answer to Hale's contention that this was permitting the conferees to legislate, Patterson argued that it was merely another form of initiating legislation, which was, after all, passed upon as solemnly and deliberately by the Senate and the House as though the proposition had been originally introduced and sent to a committee or as though the amendment had been offered in open Senate while the bill was under discussion. The foregoing discussion took place over the Railway Rate bill. The next day, June 7, 1906, the Senate disagreed to the conference report because it contained new matter and no effort was made to have the Chair rule the report out of order.[1]

An attempt was made a little later, on June 18, to have the question of conferees exceeding their authority decided as a separate issue. A resolution to this effect was introduced by Senator Joseph W. Bailey of Texas and was referred to the Committee on Rules.[2] When Senator Bailey gave notice that he would introduce this resolution he said that if the rules of the Senate did not provide that a point of order could be made and considered against the action of a conference committee exceeding its powers, then the rules of the Senate needed prompt amendment. He thought the point of order ought to be considered first before two or three days had been wasted considering the report as a whole.

[1] *Record*, 59th Cong., 1st Sess., June 7, 1906, p. 7998.

[2] See *Record*, 59th Cong., 1st Sess., June 14, 1906, p. 8457.

On the day before this Bailey had made a point of order against the conference report on the Indian Appropriation bill when the Vice-President had said, that as he had previously held, the point of order would not lie against the conference report and the question was on whether or not the Senate would agree to the report.[1] Apparently the resolution introduced by Senator Bailey on June 18 died in the Committee on Rules. No further mention is made of it in the *Record* and it was not until 1918 that the Senate adopted such a rule as he had advocated in 1906.

On June 5, 1906, there had been a long debate over the conference report on the bill to enlarge the powers of the Interstate Commerce Commission. The managers admitted that they had included new matter but defended it upon its merits. The House had had nothing in its original bill concerning the provision by railroads of switches connecting private side tracks with the railroad. The Senate had added such a provision, but had voted down an extension of this provision including spur railroads. This clause which had been voted down by the Senate the conferees had inserted. They offered as an excuse that the House conferees had asked for it, saying that they would agree to the Senate amendment relating to private side tracks but wished also to include the spur railroads. There were other points that were admittedly new but were defended on their merits.

Senator Teller of Colorado argued that if conference committees were given the right to include new material because they thought it valuable every Senator would be compelled to watch with the greatest care every conference report that was presented—that the Senate could not assume that a conference committee on principle would not include matter that had never been passed on by either House. Still

[1] See Hinds, vol. v, sec. 6430, p. 741; *Record*, 59th Cong., 1st Sess., June 11, 1906, p. 8263.

he testified from his experience on the Appropriations Committee, which had much to do with conference reports, that its members were very strict in rejecting anything that was new—that he knew of no such matter. Senator Hale bore testimony also as to the truth of this statement in regard to the Appropriations Committee. On June 7, after a discussion which went also to the merits of the propositions contained in the report, the Senate without division disagreed to the report and asked a new conference.[1]

The next year, in 1907, the conference report on the Immigration bill, which had been unsuccessfully challenged in the House on a point of order that it contained new matter,[2] was also challenged in the Senate. Vice-President Fairbanks recalled the rulings of the year before and also that of Vice-President Hobart, all to the effect that in the Senate a point of order would not lie against a conference report and that it was for the Senate either to accept or reject it. Senator Lodge also defended the right of the conferees to include the section in question because of the two facts that the Senate bill had been amended by a substitute and that the matter in the section related to matter in the original bill. The Senate, like the House, agreed to this report.[3]

When the conference report on the Underwood tariff bill was presented in 1913 several Republicans found items on which the conferees had reported rates outside the Senate and House rates, that is, either lower or higher than had been fixed by either House. In all such cases the Democrats replied that the conference committee had merely tried to preserve the orderly differentials of amended schedules and

[1] Hinds, vol. v. sec. 6431, p. 742; *Record,* 59th Cong., 1st Sess., June 5, 1906, pp. 7834-7836, June 6, pp. 7931, 7998.

[2] See *supra,* pp. 182, 183, of the present chapter.

[3] Hinds, vol. v, sec. 6426, p. 734; *Record,* 59th Cong., 2nd Sess., Feb. 13, 1907, pp. 2939-2943.

to do this it had been found necessary to make a few changes where the Houses had not disagreed. For instance, Penrose brought a point of order against the report because in it the House rate of twenty per cent on bleached burlap was reduced to ten per cent, a rate lower than that of the Senate. The Democrats said that this reduction was to offset the acceptance of the Senate amendment putting unbleached burlap on the free list.[1]

The conference report on the Federal Trade Commission bill of 1914 was changed considerably from either the House or Senate provisions, and these changes went unchallenged[2] in both the House and the Senate. In the House, minority leader Mann, Republican, said that this was a bill which from the start had been free from partisan politics.[3] In the conference report on the Clayton Anti-Trust bill of 1914 there was also new matter which, it was charged by Senator Reed, was added after consultation with the President and the Department of Justice. The conferees were said to have rewritten the "tying" or exclusive section and to have put an introductory sentence into the labor section stating that the labor of a human being is not a commodity or an article of commerce.[4] Nevertheless, in spite of a long struggle in the Senate against the bill, including a motion by Senator Reed to recommit it to the conference committee, this report was agreed to in both Houses. Reed's motion to recommit was held out of order.[5]

[1] *N. Y. Times*, Oct. 3, 1913, See *Record*, 63rd Cong., 1st Sess., Oct. 2, 1913, pp. 5305-5309, for debate between Senators Penrose and Brandegee on the attacking side and John Sharp Williams on the defense.

[2] *New York Times*, Sept. 5, 1914.

[3] *New York Times*, Sept. 11, 1914, *Record*, 63rd Cong., 2nd Sess., Sept. 10, 1914, p. 14940.

[4] *New York Times*, Sept. 24, 1914.

[5] *New York Times*, Oct. 6, 1914; *Record*, 63rd Cong., 2nd Sess., Oct. 5, 1914, pp. 16167-16170.

A week later, however, the Senate sustained a point of order against the Alaska Coal Land Leasing bill on the ground that the conferees had exceeded their authority. The new provision limited the regulatory powers of the Department of the Interior over lessees on the coal lands. When the point of order was made Vice-President Marshall said he believed it was the rule of the Senate that conferees might not include in their report matter not committed to them by either House, that a point of order could be made against such new matter, but that it had been the custom to submit the question to the Senate for it to determine whether or not it was new matter that was in dispute. Then the Chair stated what had really been the practice of the Senate when he said that he presumed that the reason for the ruling of Vice-President Hobart and others to the effect he had just stated had been that the Senate might discuss the question of alleged new matter and if satisfied with the matter in itself it might overrule the point of order, while if not satisfied with the matter it might sustain the point of order against it. This is a clear admission of the practice of deciding points of order not on their parliamentary significance but on the merits of the bill on which they are made. In this case the Senate sustained the point of order by a vote of 26 to 23 and the report was recommitted. That this vote was taken with the merits of the bill as the first consideration would appear from the discussion which followed it. Senator Myers said that there had been columns of new matter in the Clayton Act which if subjected to such a point of order sustained by the Senate could never have passed in the form in which it did pass. He said there would not have been enough of it left to light a cigarette. Senator Reed showed in what this new matter in the Clayton Act consisted, and there was no very strong denial made of the charge.[1]

[1] See *Record*, 63rd Cong., 2nd Sess., Oct. 9, p. 16351, Oct. 10, 1914, pp.

In 1916 a conference report was put through both Houses containing new matter which caused some sensation when it was discovered. The bill was the Army Reorganization bill. The second conference report on this bill was adopted by the Senate on May 16, 1916, and by the House on May 18, 1916. On May 20 the *New York Times* published an article entitled "Jokers in the Conference Report." This article explained that there were certain provisions in the conference report on the Army Reorganization bill which had not been included in either the Senate or the House bills as these had been sent to conference, but had been inserted by the conference committee. One of these provisions was for the appointment of a military commission to investigate awards of medals of honor. This had not been discussed in the House or in the Senate. Although denial was made by a member of the conference committee that this was aimed at General Wood, it was the common belief that it was. Another joker was interesting to those who understood the peculiar language used to frame it. In a paragraph providing for the appointment of Judge Advocates was inserted a provision that one vacancy in this department should be filled by a person from civil life, not less than forty-five nor more than fifty years of age, who should have been for ten years a judge of the Supreme Court of the Philippine Islands, should have served for two years as a captain in the regular or volunteer army, and should be proficient in the Spanish language and laws.

It was known to some people who imparted their information to the *Times* reporter that this description fitted Judge Adam C. Carson of the Supreme Court of the Philippine Islands, at that time in the United States on leave,

16406-16412 and *New York Times*, Oct. 11, 1914. This Alaska Coal Land bill did pass, however, in spite of Senator Myer's predictions of failure for it on being recommitted so late in the session. *Record*, pp. 16724, 16747, 16964.

whose home was in Virginia in the Congressional District of James Hay, Chairman of the House Committee on Military Affairs and Chairman of the House conferees. Mr. Hay was responsible for its being inserted in the conference report. The next day he admitted as much and also that the description fitted Judge Carson. No explanation was made of the General Wood "joker" although the editor of the *Times* clung to the belief that the provision inserted was meant for him.[1]

The illustrations given show that before 1918, conference reports were not ruled out by the presiding officer in the Senate on a point of order that the managers had inserted new matter not committed to them by either house. In the first decade of the twentieth century the Senate itself was rather particular about this question. Reports that unmistakably contained new matter were disagreed to or withdrawn for the elimination of the objectionable items. In the second decade, however, this care seems to have relaxed and new matter that was not objectionable on its merits was sometimes allowed to pass unchallenged, or if it was challenged was nevertheless permitted to pass. Then came the flagrant case of the "jokers" in the Army bill of 1916. Senators began to think more seriously of a rule to prevent such inclusions.

The most sensational case of new matter being included in a conference report occurred in connection with the War Revenue bill of 1917. This was heralded the country over and led to the adoption of the Senate rule of 1918 which permitted a point of order to lie against a conference report containing new matter and provided that a report against

[1] *New York Times,* May 20 and 21, 1916. See *Record,* 64th Cong., 1st Sess., p. 8139 and p. 8406 for the adoption of the report by the Senate and the House. The description which fitted Judge Carson may be found in the conference report on p. 8376 of the Record. It was not mentioned in the discussions of the report in either House.

which such a point of order was sustained should be recommitted to the conference committee.

The clause which caused the scandal was not discovered until after the report had been adopted by both the Senate and the House, and signed by the President. The report was adopted in a spirit of gloom. It contained provisions for a tax on excess profits of both farmers and professional men and many of those voting for it were struck by these provisions—or so they thought. Almost every Senator who spoke in debate criticized the report in some way.[1] An editorial in the *Times* the following day bitterly assailed the "star chamber" legislation of the conference committee which was responsible for what was called the double taxation—on income from investments and from earnings.[2]

Then the following day came the announcement from the Treasury Department that Senators and Representatives and all others receiving compensation from the Government were exempt from the tax on their salaries. The provisions for this exemption were so scattered through the bill that only close study revealed them, and to give such close study neither Senate nor House had been in a mood when the report was made. They had been intent, rather, upon an early adjournment.

According to the *New York Times*[3] Congressmen were loath to talk about the matter, but little by little the story of how the provision for the tax was inserted had been pieced together. There had been a protest in the conference committee against letting the farmers go free of taxation, and this feeling was so strong that the friends of the farmers on the committee had had to compromise. Foremost among

[1] *New York Times,* Oct. 3, 1917 and *Record,* 65th Cong., 1st Sess., Oct. 2, 1917, pp. 7615-7633.

[2] *New York Times,* Oct. 4, 1917.

[3] Oct. 5, 1917.

these friends of the farmers was Representative Claude Kitchin, chairman of the Committee on Ways and Means, Democratic leader of the House, and chairman of the House conferees. To offset the tax on the excess profits of the farmers he had insisted on having the tax made applicable to all businesses. On October 5, Senator Penrose informed the newspaper men that Representative Kitchin was responsible for the exemption clause. He said that the members of the conference committee were obliged to accept it in order to prevent a deadlock. Mr. Kitchin defended the exemption by saying that the tax was supposed to be on any business and the Government was not a business. He said that he himself served it at a loss.[1]

The tax was of so much interest to the country that it called attention to the defective control of the conference committee as nothing else had. A resolution was introduced on December 7, 1917, by Senator Curtis.[2] It was submitted to the Senate Committee on Rules and that committee on March 8, 1918, reported it as clause 2 of Rule XXVII, which reads as follows:

> Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained, the report shall be recommitted to the committee of conference.[3]

This rule, known as the Curtis rule, was adopted unanimously and without discussion. Only a few days after its adoption the conference report on the Railroad Control bill

[1] *New York Times,* Oct. 6, 1917.

[2] See *Record,* 65th Cong., 2nd Sess., Dec. 7, 1917, p. 62.

[3] *Senate Manual,* p. 32; *Record,* 65th Cong., 2nd Sess., March 8, 1918, p. 3179.

was presented, and against it a point of order was at once made on the ground that it contained matter outside that committed to the conference committee by the Senate and the House. This was a case in which the House had struck out all of the Senate bill after the enacting clause and substituted its own bill. This fact gave the conferees much latitude as to matter that might be included. Furthermore the plea was made by Senator Smith that the report was made up without knowledge that the new rule was going to be adopted and without taking it into consideration. In the debate Vice-President Marshall took the stand that the Chair would decide as to the application of the rule but that the Senate must decide the facts of the case. In spite of much eloquent defense of the report on its merits and on the circumstances of its presentation and in spite of doubts as to the existence of the conference committee after the report had been made, the report was recommitted to the conference committee. There proved to be no difficulty in doing so in this case as the report had not yet been made in the House and therefore the House Committee had not been discharged.

In making his plea in defense of the report, Senator Smith of South Carolina said it had been made up under the Senate's old rule and practice of putting in anything and everything that seemed to be germane or pertinent, and allowing the conferees much discretion in order to reach what they thought was the desire and purpose of the two Houses. The particular clause on which the report was recommitted was one forbidding the States to tax railroads under Federal control at a higher rate than that used in the year before Federal control was assumed. Senator Robinson of Arkansas defended the report on the plea that since the House had struck out all of the Senate bill after the enacting clause and had substituted its own bill, the whole matter had been

thrown into conference. He cited precedents in support of this contention from the House practice, which in allowing a point of order to lie against a conference report containing new matter, was similar to that required by the new Senate rule. It was shown conclusively, however, that both Senate and House bills contained provisions to the effect that nothing in the act should impair or affect the existing state laws in relation to taxation.

Finally an attempt was made to defend the clause purely on its merits. Senator Pomerene of Ohio said that in the legislatures of certain states bills had been presented with the purpose of raising taxes on railroads while they were under Government control. In one state where the property valuation of the roads was not high the tax would be increased as much as five hundred thousand dollars. In spite of such evidence, however, the Chair ruled the report out of order, the ruling of the Chair was sustained by the Senate, and the report was automatically recommitted to the conference committee. Later in the day it came back with the objectionable matter eliminated. It was then adopted and sent over to the House.[1]

A month later, on April 17, 1918, Senator Ashurst, Chairman of the conference committee on the part of the Senate on the Indian Affairs bill, made a report from that committee and at the same time announced that it violated the new rule and asked that some Senator make a point of order against it. Senator Curtis complied with this request, and the report was ruled out of order.[2] There was no contention at all.

[1] *Record,* 65th Cong., 2nd Sess., March 13, 1918, pp. 3418-3423.

[2] *Record,* 65th Cong., 2nd Sess., Apr. 17, 1918, p. 5189. There was some difficulty in the matter of recommittal in this case. It seemed that the Senate had made the mistake when it sent to the House the message announcing its recomittal of the report of sending with that message the papers, (that is, the bill and amendments) and those papers were then

One of the hardest-fought battles against a conference report containing new matter was that waged by Senator La Follette in connection with the Oil and Coal Land Leasing bill of 1919. His three-hour speech made to a point of order on March 1, 1919, almost at the end of the session, referred to as a filibuster by the newspapers, included a careful analysis of the matter inserted into the report by the conferees, and, as well, an exposition of the evils of the conference committee system. He intended that this indictment of the system should be heard beyond the Senate and by the people of the United States. The speech was made to crowded galleries and to a not empty Senate. There was a good deal of applause both from the Senate and from the galleries—for which the galleries were called to order.

Senator Thomas of Colorado answered the assault on the conference committee system at one stage by reminding La Follette that he, himself, had sometimes taken advantage of it to put through legislation which he desired. One instance was that of the bill of 1913 to value railroad property. Senator Thomas remembered that on another occasion at the end of the session he had assisted La Follette to put through the bill to regulate the rights of seamen. La Follette admitted these facts but contended that anybody who got

on the Speaker's table. They could be withdrawn only by unanimous consent. (See *Record,* p. 5847.) A request was made in the House on April 23, (See *Record,* p. 5513) for unanimous consent to withdraw this conference report as it had been rejected in the Senate. There was a rather heated discussion in regard to the Senate rule and a good deal of opposition expressed to changing the practice of the House to comply with it. In arguing for adjustment Representative Garner of Texas said he did not contend, as was suggested, that another body should make rules for the House but merely that the House rules should contain whatever was necessary to facilitate the action of the House in connection with the action of the other body. The Speaker finally ruled that the request for unanimous consent for withdrawal of the report was in order and unanimous consent was granted. (*Record*, 65th Cong., 2nd Sess., Apr. 23, 1918, p. 5513-15).

legislation in the Senate must get it under the rules. What he was demanding was a change in the rules. During La Follette's speech Senator Ashurst interposed to call attention to the drastic nature of the Curtis rule—so drastic that it prevented a full and free conference. What more barriers, intrenchments, fortifications could be conceived of that would better protect the interests of the public by guarding against the injection of extraneous matter into a conference report? La Follette conceded the excellence of the rule but persisted in attacking the iniquities which made the rule necessary.

La Follette's main plea was that the rules should not be relaxed at the end of the session. Especially did he demand the enforcement during the last six days of the strong, unwritten rule that conference reports be printed and lie over a day before consideration in the Senate.[1] If this rule were not relaxed at the end of the session there would not be the same reason for delaying conference reports until then and they would be treated with more deliberation. La Follette had been informed by Senator Smoot that the bill over which the conference committee had worked had passed the two Houses, in one case two years before, and in the other, one year before. There was no possible excuse for delaying the report until the last hours of the session. That very fact should be as a notice to Senators that there was something in it that should not be there. A judgment that resisted for a year must in the end have been coerced into agreement.

The new matter introduced was a provision extending the leasing of oil lands to Alaska. The House had sent to the Senate a leasing bill covering oil and coal lands and pro-

[1] There is a House Rule to the effect that all conference reports shall be printed in the *Record* before being considered in the House, except on any of the last six days of a session. This is Rule xxix. See *House Manual* sec. 887. The Senate has no such written rule but follows the same practice as that required by the House rule.

viding that it should extend to all of the territory of the United States except Alaska. The Senate had adopted a substitute for the House bill which provided for the disposition of all the coal lands of the United States, including Alaska, by sale or lease; but with reference to oil the Senate had adopted a provision that the law should apply to the United States except Alaska. Thus both Houses had made specific exception of Alaska. Nevertheless the conferees brought back a bill which extended the leasing act to Alaska. By continuing to talk on his point of order until the Senate leaders were forced to make terms with him, La Follette was successful in preventing the adoption of the report.[1] But there was no decision on the point of order.

The conference on the Muscle Shoals bill of 1925 with the point of order made against it by Senator Norris under the Curtis rule of 1918 is worthy of a good deal of study in connection with the Conference Committee System. In the first session of the sixty-eighth Congress the House of Representatives passed a bill selling part and leasing part of the Muscle Shoals property owned by the United States to Henry Ford on certain conditions contained in the offer Ford had made the Government.[2] This bill was not acted upon in the Senate. In the second session Chairman Norris of the Senate Committee on Agriculture and Forestry to which the House bill had been committed, reported a substitute for it in the shape of a bill providing for Government ownership and operation of a great power plant at Muscle Shoals.[3] To this bill Senator Underwood of Alabama

[1] *Record,* 65th Cong., 3rd Sess., March 1, 1919, pp. 4706-4713. The report had been opposed also in the House but unsuccessfully. *Record,* 65th Cong., 3rd Sess., Feb. 27, 1919, p. 4497. The fact that the Senate bill was a substitute for the House bill gave the conference committee, according to the House practice, much more latitude than the interpretation of the new Senate rule permitted.

[2] *Record,* 68th Cong., 1st Sess., March 10, 1924, p. 3928.

[3] *Record,* 68th Cong., 2nd Sess., Dec. 3, 1924, p. 63.

offered an amendment in the nature of a substitute. According to his plan Muscle Shoals was to be leased and operated under private management. Furthermore, the Underwood bill provided primarily for a fertilizer project instead of the power project of the Committee bill. After a great deal of debate and much confused voting the Underwood amendment was finally adopted by the Senate.[1] The all-important question now was whether this Underwood Senate bill and the House bill based on Ford's offer should be sent to conference. In fact, there were two questions involved; first whether or not the two could properly be sent to conference, and second, whether it was most desirable to send them to conference considering all of the facts in the situation. In the first place, as Ford had withdrawn his offer in October, 1924, the House bill was practically dead and had only a technical existence. In the second place, there was, on the part of the proponents of the Underwood bill in the Senate and on the part of the House leaders, a general mistrust of members of the Senate Committee on Agriculture and Forestry who would, according to custom, be the Senate conferees.[2] The very men whose ideas had prevailed in the Committee on Agriculture and Forestry and who had drafted the Government ownership bill which the Senate had defeated would make up the Senate conference committee. It was thought by some of the leaders that there was enough difference between the House and Senate bills to permit of the conference committee's reporting back another Government-ownership plan. Nicholas Longworth, floor leader of the House, for some time was undecided as to whether the bill should go straight to conference or

[1] *Record,* 68th Cong., 2nd Sess., Jan. 14, 1925, p. 1808. See account of the voting in *New York Times,* Jan. 14 and 15, 1925.

[2] For explanation of this see *supra,* pp. 158-162. There is also here given an account of the appointment of the Senate Conference Committee on this bill.

whether it should first be referred to the House Committee on Military Affairs. This committee had reported the first House bill and might now draw up one more like the Underwood bill so that so much latitude would not be allowed the conferees.[1] If, however, managers friendly to the Underwood bill could be agreed upon, the desire was to send the bill directly to conference and speed its passage before the end of the session. After considerable delay the House leaders took the risk and by an overwhelming majority the House voted to send the bill to conference.[2] A few days later the desired managers on the part of the Senate were secured and the conference committee set to work.

The conference report was considered in the Senate on February 18, 1925.[3] It was printed in parallel columns, one column giving the bill as it passed the Senate, the other the bill as it was agreed to by the conference committee. When the report was brought up again on February 19, Senator Norris announced that he would make a point of order against it.[4] He seems to have desired to make the point of order while Senator Cummins was presiding, but there was considerable speculation as to what would be Senator Cummins' attitude toward the point of order as when

[1] See *New York Times*, Jan. 17, 18, and 19, 1925.

[2] *Record*, 68th Cong., 2nd Sess., Jan. 17, 1925, p. 2549. This was done by a special resolution from the Committee on Rules. See *supra*, p. 144.

[3] *Record*, 68th Cong., 2nd Sess., p. 4021.

[4] When Senator Norris first made this announcement Senator Jones of Washington was presiding. Norris said he had been asked that morning by the President *pro tempore* (Cummins) if he intended to make a point of order and he had said that he did. He said now that he was satisfied to make it to the present occupant of the chair but it was not very satisfactory to have the presiding officer changed while a point of order was being made. He could not say how much debate there would be nor how much time would be consumed in the discussion of the matter. To relieve the difficulty at this moment Senator Cummins entered the chamber and took the Chair.

presiding during the debate on the Fordney-McCumber tariff bill in 1922 he had ruled against recommittal of the conference report. It was contended by Senator Underwood that this would make it inconsistent for him to sustain Norris's point of order.[1]

Senator Norris began by saying that in the present case there was a condition presented to the Senate such as had never been presented before. If his point of order should be considered technical, it was only by the greatest of technicalities that the conferees were allowed to make any changes in the bill as it passed the Senate. Only by virtue of a technicality did the conferees have any House bill to consider, for the Ford bill passed by the House was quite dead, since Ford had withdrawn his offer. Nevertheless it had a technical existence and by reason of this existence, the conferees were empowered to bring in anything between its terms and those of the Underwood bill which the Senate had passed. As a matter of fact there was only one bill to discuss and that was the Underwood bill.

Using, in parallel columns, the conference bill and the Senate print of the bill as it passed the Senate, Senator Norris proceeded to make his point of order. First he pointed out a provision not in either the House or the Senate bill, one entirely new, authorizing the President to employ advisory officers, experts, agents, to enable him to carry out the purposes of the bill and granting him $100,000 to pay such assistants. This provision alone Norris considered absolutely fatal to the conference report.

Next he found that from the payment of annual rental by the lessee on a percentage basis of the cost of construction of two dams for which both House and Senate bills provided, the conference bill, alone of all three bills, excluded

[1] See *New York Times*, Feb. 20, 1925. For the effort to recommit the Tariff bill of 1922 in the Senate see *supra*, p. 194, n.

the cost of the locks. This was another case of the conferees overstepping their power. Furthermore, this same provision gave the President power to deduct from the annual rental an amount representing the value to navigation of the development of the works, and this amount was to be determined by the President. This also was a new provision inserted in the conference report. It was not what the President would do but what he could do that was important, said Norris.

He found also that the conferees had exceeded their authority by requiring the production of less nitrogen fertilizer than either the House bill or Senate bill. The House bill required 40,000 tons of nitrogen annually; the Senate bill required 10,000 tons the third year, 20,000 tons the fourth year, 30,000 tons the fifth year, and 40,000 tons thereafter. The conference bill required 40,000 tons only at the end of the tenth year. There was considerable difference there. Furthermore if in the judgment of the President it was wise to do so he was authorized to substitute for twenty-five per cent of this nitrogen, an amount of phosphoric acid, four tons of phosphoric acid for every ton of nitrogen that would have been required. This provision was entirely new.

There was another provision which did not appear at all in the Senate or House bills and nothing like it appeared in either. This provision authorized the expenditure of $3,472,487 for investigation by the President of plans for the construction of Dam Number 3 and the approach to the locks in Dam Number 2 in the Tennessee River. The amount named was the amount received from the sale of the Gorgas plant. This amount appeared in the House bill as the amount which might be expended to build Ford another plant to compensate him for the loss of the Gorgas plant, and as Senator Lenroot had said, it was rather a limitation on the amount that might be expended than an

appropriation, while in the conference bill it was an appropriation, and neither bill contained an appropriation.

The conference bill thus introduced new matter in granting the President $100,000 for employing advisory officers, experts, etc.; in requiring the production of a smaller amount of nitrogen; and in appropriating over $3,000,000 for the investigation of plans for the construction of Dam Number 3.

The Chair called attention to the statement of the conferees of the House that since the Senate had struck out the whole House bill and substituted therefor an entirely new bill which in turn was disagreed to by the House, the whole subject of the production of nitrates in time of war and fertilizer in time of peace at Muscle Shoals came before the conference committee. This was in the statement made by the House conferees to the House and not in that made by the Senate conferees to the Senate. The obvious answer is that the House rules allow much more latitude as to what may be contained in a conference report than the Senate rules do. This answer was made by Senator Lenroot. The new Senate rule of 1918, known as the Curtis rule, he said, greatly narrowed the power of conference committees. It distinctly stated that conferees shall not insert in their report matter not committed to them by either House nor shall they strike from the bill matter agreed to by both Houses, and that if they do either a point of order may be made against the report and, if this is sustained, the report shall be recommitted to the committee of Conference.

In defending the conference report Senator Underwood contended that a strict construction could not be put upon the Curtis rule or very few bills would be enacted into law. He argued that the rule really meant to allow any matter that was germane to be included in the conference report—that that was the construction put upon it by the present

occupant of the chair, Senator Cummins, on September 18, 1922, when the conference report on the tariff bill was before the Senate.

The Chairman explained his attitude toward the disputed clause of Rule XXVII, the Curtis rule. His interpretation was that under it no new legislation could be proposed in a conference report. A conference report was not subject to amendment, and if new legislation was brought forward, the Senate was put to great disadvantage, because it must either agree to the report or disagree to it, without any opportunity to modify or change the new legislation that was brought forward.

Underwood said his contention would be that there had not been new legislation—only amendments which were germane and necessary to reconcile the differences between the two Houses. Later on he said, however, that of course there had never been any dispute over the fact that where all after the enacting clause had been struck out of a bill, there was very much greater latitude conferred by legislative bodies upon the conferees than where there had been a mere change of language made by amendments. In his opinion, if the Senate did adopt this interpretation of the rule relating to new matter it would not be long before it would find itself sending its managers to conference with their hands tied and an impassable block confronting them which would prevent conference and thus prevent legislation by the two Houses on many subjects.

Underwood thus argued that in this particular case the changes made by the conference committee were germane and did not introduce new legislation, but that the circumstances of striking out all after the enacting clause and substituting a new bill by the Senate had given the managers much greater privilege in making changes. He was now asked by Senator Lenroot and the Chairman to explain just

what he meant by that privilege. First Senator Lenroot asked what he thought the Senate had accomplished by the adoption of the Curtis rule of 1918. Underwood answered that up to the time of the adoption of that rule, the Senate did not challenge the question of germaneness in a conference report. It merely voted upon whether or not it approved of the contents of the report. The Chairman then asked for Underwood's understanding of the term germane in this connection, whether it meant germane to the subject or germane to the bill and amendment. Underwood answered that he took it in the latter sense because the one amendment covered the whole subject-matter. The whole subject of the production of nitrates in time of war and fertilizer in time of peace at Muscle Shoals was before the conference committee and any bill that committee might agree upon relating to the subject would be in order.

Underwood then proceeded to answer Norris' point of order item for item. He contended in regard to the first point of criticism, that of the authorization of $100,000 for the President to employ advisory officers, experts, etc., that the Ford bill authorized the President to make a lease of the Muscle Shoals properties. This required no advisory officers, but when Ford's offer was withdrawn the matter of a lease would require advice and expert knowledge and the $100,000 was authorized to pay for it and was therefore germane. The matter at issue was that of a lease. The House bill said a lease to Ford, and the Senate bill a contract of lease, not naming the lessee. Expert advice was necessary to make that lease.

In regard to the payment of annual rental, Underwood found in the Ford bill a reduction of $17,000,000, which he contended justified the reduction provided in the conference report. And as to the provision which gave the President power to make further deduction, he argued that it was

exactly like the provision in the Fordney-McCumber Tariff bill of 1922 which had been contested on a point of order but had been ruled to be in order by President *pro tempore* Cummins. In that case the question was on the authority given the President by the conference report to use the plan of American valuation at his discretion. The House bill had adopted American valuation and the Senate foreign valuation as the basis for *ad valorem* duties. The conferees authorized the President to use American valuation in dealing with the entire dutiable list. In making the ruling in 1922 the President *pro tempore* had admitted that the conference bill in so far as the basis of valuation to be employed was concerned tremendously increased the power of the President, and yet he had overruled the point of order. Now Underwood argued that the same principle held in the case of the Muscle Shoals conference report. The President's power was admittedly increased, but if that was permitted in the tariff bill why not in the Muscle Shoals bill?

As to the amount of nitrogen fertilizer to be produced, Underwood contended that the Ford bill qualified its requirement of 40,000 tons by the words "when practicable to do so" and "according to demand." This left it open for the conferees to authorize a reduction in the amount required in their bill.

Of the item which Senator Norris had called an appropriation of $3,472,487 for investigation by the President of plans for the construction of Dam Number 3, the amount for which the Gorgas plant had been sold, Underwood said it was no more an appropriation than the House provision for the same amount to be used in another way had been an appropriation. It was merely an authorization and justified because the House had made a similar authorization.

President *pro tempore* Cummins agreed that all matters under dispute were germane. He inquired, however, whether

or not the rule should be interpreted as Underwood interpreted it. Underwood held that the rule forbade the introduction by the conference committee of new matter not germane to the bill and amendment. Should the Senate adopt the same interpretation?[1] That was the question to be decided before he made his ruling.

On February 20, Senator Cummins was ready to rule and sustained the point of order made by Senator Norris. In ruling he said that he disregarded entirely the text of the House bill, for in his opinion it could not fairly be claimed that the two Houses in their original action agreed upon any point or upon anything. It was, he said, quite impossible to define the phrase "new matter" with that accuracy and precision which would make any rule announced applicable to the infinite variety of cases that would arise. However, he took it to have the same meaning as the phrase "new legislation" used in the rather recently amended Rule XVI of the Senate that made it out of order for the Committee on Appropriations to report an appropriation bill containing amendments proposing new or general legislation.[2] The identity of these two phrases made it all the more important that the present ruling should be correct. The Chair was of the opinion that it was intended when the Curtis rule was adopted to restrict the general parliamentary law frequently announced by the Speaker of the House of Representatives which granted great latitude to the conference committee when one House had struck out all after the enacting clause of a bill from the other House and had substituted a bill of its own. The House knew when it sent the bill to conference that the rule of the Senate forbade the

[1] For the point of order and ensuing debate see *Record,* 68th Cong., 2nd Sess., Feb. 19, 1925, pp. 4123-4137.

[2] See *Senate Manual,* p. 20. This rule was amended March 6, 1922, see *Senate Journal,* 67th Cong., 2nd Sess., p. 126.

insertion of "new matter" in a conference report, and the Chair assumed that it adopted the conference plan for bringing the Houses into agreement with full understanding of the limitation placed upon the Senate conferees.

The Chair said he did not hold that every change made in the Senate bill by the conference committee constituted "new matter." To come within the spirit of the Senate rule "new matter" must be of substantial import.. But although he hesitated to point them out he did see many changes of substantial import in the conference bill. And without pointing them out he proceeded to sustain the point of order made by Senator Norris.[1]

As a matter of fact Senator Cummins as President *pro tempore* did not in his ruling decide the question he had asked the day before as to whether "new matter" in the conference report was according to the rule to be interpreted as "new matter" not germane to the subject-matter of the bill and amendment. He avoided this decision when he announced in the opening words of his ruling that he would disregard the House bill. That in doing this and later announcing that the Senate rule was to be interpreted differently from the House practice, his position was somewhat difficult to make appear consistent, would explain his declining to point out the specific instances in which the present conference report violated the Senate rule. At all events he did not pronounce definitely upon the question of "new matter" versus "new matter germane to the bill and amendment."

Senator Underwood immediately made an appeal from the decision of the Chair and a long debate followed. Underwood first asked the Chair to name the instances in which he considered the changes had been of substantial import. The Chair was about to reply when Senator Norris

[1] See *Record,* 68th Cong., 2nd Sess., Feb. 20, 1925, p. 4244.

interrupted to say that the Senators might have other reasons for sustaining the decision of the Chair than the ones the Chair might give. Senator Lenroot of Wisconsin said that the only purpose accomplished by yielding to the request would be to estop the Chair from determining the question on its merits when a new conference report was presented. The President *pro tempore* said he did not feel at liberty to announce anything for the benefit of the conferees until the appeal had been taken and he knew whether or not the bill was to be returned to them.

The argument continued, Norris insisting that in deciding upon the appeal no Senator ought to be confined to the reasons given by the presiding officer when he might have other reasons which to him seemed sufficient. Underwood on the other hand contended that it was futile to send the conferees back without any information as to the particular items of the bill which were considered to violate Rule XXVII. Senator Smith of South Carolina asked if Underwood thought it really the province of the Chair, when a point of order was made as to some specific portion of a bill, to indicate all the points of order which in his opinion might be raised, whether or not any Senator on the floor had called attention to them. Underwood said he thought it would be a good practice. Smith on the other hand thought it would be anticipating a point of order, something the Chair had no parliamentary right to do.

Senator Lenroot in a long and well-planned speech, made a strong plea for sustaining the Curtis rule. If it should be nullified, he said, conferees would again have the power to write legislation into a conference report, legislation that neither House ever had an opportunity to consider, amendments that neither House had ever acted upon in any way. To his mind it was very clear that the conferees in writing this report had construed their powers under the rules as

Senator Underwood interpreted them—that they could write into the conference report anything which if offered in the Senate would have been germane to the Senate bill, or if offered in the House would have been germane to the House bill. Senator Lenroot said he would show from the precedents of the Senate that since the adoption of the rule, no such power was ever conferred upon conferees nor was ever intended to be so conferred. Before March 8, 1918, when clause 2 of Rule XXVII was adopted, the practice was that advocated by Senator Underwood, but this Curtis rule had changed the practice. The purpose of that rule stated by Senator Curtis when he introduced it was to prevent conferees from legislating—from substituting their will for the will of the Senate and the will of the House.

Senator Lenroot then cited the precedents which have been given earlier in this chapter,[1] that of the conference report on the Railroad Control bill of 1918 against which a point of order was sustained by Vice-President Marshall and the conference report on the Oil and Coal Land Leasing bill which Senator La Follette successfully contested on a point of order that it contained new matter. In both of these cases a bill passed by one House had been amended in the other House by striking out all after the enacting clause and substituting an entirely new bill just as in the case of the Muscle Shoals bill. In the Railroad Control bill the disputed clause was one restricting the powers of the States in relation to taxation in spite of the fact that both Senate and House bills had forbidden such restriction. In comparing this report with that on the Muscle Shoals bill Senator Lenroot said that then the subject-matter was railroads just as now the subject-matter was Muscle Shoals. In the Railroad Control conference report there was a particular portion which dealt with the subject of taxes. Both Houses

[1] See *supra*, pp. 205-211.

had dealt with it. There was no doubt but that this provision which the conferees reported was germane, because taxes had been treated by both Houses. But a point of order had been made that this proviso was new matter in the bill and therefore obnoxious to the rule. It was debated at very considerable length, the Vice-President sustained the point of order, and an appeal was taken from his decision exactly as in the present case. The Senate sustained the decision of the Chair by a vote of 51 to 23 and Senator Underwood voted to sustain the Chair.

In the Oil and Coal Land Leasing bill the disputed clause was one extending the leasing act to Alaska although Alaska had been specifically excepted in both Senate and House. Here again the clause was germane to the subject-matter of the bills but it was new matter and was ruled out of order.[1] To the contention of Underwood that with this construction of the rule the hands of the conferees would be bound, Lenroot said they were bound. That was the very purpose of the rule, so that the Senate and the House might themselves do the legislating and the conferees confine themselves to points of difference between the two Houses.

Lenroot also answered Underwood's argument that the Muscle Shoals conference report was similar to that on the Tariff bill of 1922, a point of order against which had been overruled.[2] He held that in that case there was clearly no new matter. The Senate had provided for American valuation and the House for foreign valuation, and the question was as to the powers the President could exercise in determining which valuation should be applied. Both Houses had dealt with the subject and there was no new matter.

If the point of order was sustained, in this case, said

[1] Senator Lenroot was mistaken as to there having been an actual ruling on the point of order. See *supra*, p. 211.

[2] See *supra*, p. 194, n.

Senator Lenroot, the conferees would hereafter confine themselves to matters in difference between the two Houses irrespective of whether the differences arose through particular amendments to a given bill or through one House disagreeing to the bill of the other and passing a substitute of its own. In reason there should be no distinction between the two methods of amendment. If the House in one bill expressed its will upon a certain subject and the Senate in another bill substituted for the House bill expressed its will on the subject but in a different way, the conferees should still be bound as to all items on which the two Houses agreed.

In closing, Senator Lenroot stressed the importance of the parliamentary question at issue. He knew, he said, the more or less loose practice in the Senate of voting upon parliamentary questions according as each Senator believed the merits of the main question to be—making the parliamentary question secondary. He had always felt that this was wrong and had protested against it, and in voting he had felt it his duty to vote upon a parliamentary question independently of any other issue involved. If because Senators were in favor of the conference report they now voted to overrule the decision of the Chair sustaining the point of order against it, they would have torn down the protection they now had against legislation by managers of conference committees.[1]

On February 23 the debate was continued and Norris made his final speech before the vote was taken on the appeal from the decision of the Chair upholding the point of order. He criticized the report on its merits in some particulars [2]

[1] For the ruling of the Chair and the debate following it on February 20, see *Record*, 68th Cong., 2nd Sess., pp. 4243-4250, 4310-4312.

[2] For one thing, he took up the clause in the conference report permitting the substitution of the manufacture of phosphoric acid for that of

but put his main emphasis on the importance of sustaining the rule under which the point of order was made. In doing so he went back to the reasons for the adoption of the rule in 1918 by a unanimous vote of the Senate. There was, he said, a great clamor the country over against the secrecy in which so much of the legislation was put through Congress. And there was objection particularly in the Senate that this power of legislating in secret was in the hands of a very few men of long service who had gradually worked themselves up to the top of all the principal committees. This condition had been somewhat improved by a wider distribution of committee chairmanships and a stricter adherence to the practice of appointing managers of a conference from the committee which had had the bill in charge. Still the managers needed to be curbed in their legislative activities or they would gain too much power. His final plea was for a vote on the parliamentary question of sustaining the rule for the sake of the rule.

The decision of the Chair was sustained by a vote of 45 to 41 and the conference report was automatically recommitted to the committee of conference.[1]

nitrogen. Senator Smith of the Committee on Agriculture and Forestry, said Norris, was an expert on fertilizer. Smith had said that there were three ingredients commonly used in fertilizer, nitrogen, potash, and phosphoric acid. Potash was very difficult to get in this country and was imported from Germany. It could, however, be manufactured by much the same process as that used to produce nitrogen. Phosphoric acid, on the other hand, was almost as common as sand. These things being true, said Norris, if the managers were going to substitute anything for nitrogen, why not substitute potash?

[1] See *Record,* 68th Cong., 2nd Sess., February 23, 1925, pp. 4395-4403. As is well known, efforts to pass the Muscle Shoals bill during the sixty-eighth Congress were abandoned before the end of the session. On March 3 the House adopted a resolution authorizing the President to appoint a commission to investigate methods of disposing of the Muscle Shoals property. See *Record,* 68th Cong., 2nd Sess., March 2, 1925, pp. 5178-5183. The resolution was House Resolution 457 and was in-

At the present time the machinery of control of managers has reached a considerable degree of efficiency in both the Senate and the House. In both Houses a point of order may be made against a conference report because it contains new matter not committed to the conferees, but the Senate rule is a better protection against legislation by conference committees than the House practice in this regard. The House practice permits the inclusion of new matter if the new matter is germane to the bill or the amendments. The Senate rule has been interpreted in several important cases to mean that new matter included in a conference report, whether the new matter is germane or not, will make that report subject to a point of order from the floor, which, if sustained by the presiding officer and the Senate, if an appeal is made, will automatically recommit the report to the conference committee.

The House of Representatives has a rule for appropriation bills which is proving effective in keeping the conference committees from agreeing to new legislation on such bills without first being authorized to do so by the House.

These two rather recently adopted rules have put into the hands of those Senators or Representatives who are watchful of the interests of the Government, weapons which are capable of skilful use against encroachments by the managers.

troduced by Representative Martin B. Madden of Illinois from the Committee on Military Affairs. On March 28, the *New York Times* printed the names of the men whom the President had appointed.

CHAPTER IX

Comparison between the Congressional Conference Committee System and the Methods of Adjusting Differences in France

At the present time nearly all constitutional governments have bicameral systems of legislation. In every one of these bicameral systems there must be some method of adjusting differences between the two branches, so that serious deadlocks cannot stop the functioning of the government.[1] It is impossible in a study of the scope of the present one to make adequate comparison between the method used in the United States Congress, which is the conference committee system, and the methods used in all other systems. Comparison has necessarily been limited. For reasons partly arbitrary and partly logical, it has been limited almost entirely to a study of the methods of adjusting differences between the French Senate and Chamber of Deputies.

In making comparison with the systems of continental Europe, it has seemed little to the point to consider bicameral legislatures in which one chamber is much more powerful than the other. In such cases the means of adjustment cannot approach in importance that of the United States

[1] On the general subject of the bicameral system and methods of adjusting differences between the branches, see H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910), and J. A. R. Marriott, *Second Chambers* (London, 1910). Temperley in particular has explained the different formal methods—dissolution, referendum, joint sessions, and conference, and has discussed the extent and manner of use of each in the chief bicameral systems existing in 1910. A tabular arrangement of this information makes it readily accessible.

conference committee. If one house in a bicameral system is so constituted as to be able to have its way in any event, then, perforce, almost any system of adjusting differences will work. On the continent of Europe, France is the only country that has an upper chamber comparable in power with the United States Senate. In the existing European governments established before the World War, the upper chambers are subordinated morally or constitutionally to the lower chambers. The post-war constitutions of Europe, although almost all of them provide bicameral systems of legislation, also make provision that the upper chambers shall not be coördinate with the lower but shall be subordinated to them.[1]

The English Parliament before the Parliament Act of 1911, which legally subordinated the House of Lords to the House of Commons,[2] offered a bicameral system comparable with the Congressional bicameral system. It was of course in the English Parliament that the conference committee originated. Its origin and development up to the time it was replaced by the Cabinet as a necessary instrument for the adjustment of differences between the House of Commons and the House of Lords has already been considered in some detail in this study.[3] Concerning the English bicameral system after the rise of the Cabinet system and before the Lords took their stand on the Lloyd-George Budget of 1909, the most obvious conclusion is that the Cabinet Government has been strong enough, perhaps also diplomatic enough, to avoid serious deadlocks between the

[1] *Cf.* McBain and Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 38-41.

[2] McBain and Rogers, *op. cit.*, pp. 41-43. Sir Thomas Erskine May, *The Constitutional History of England* (London and New York, 1912), vol. iii, pp. 341-384. Actually the House of Lords had long been subordinated to the House of Commons.

[3] See *supra,* chapter ii.

Houses,[1] and there has always been the possibility of recourse to dissolution of the House of Commons. Furthermore, the Lords were for many years most careful not to press their rights too far, and perhaps kept their equality with the House of Commons in name long after they had lost it in reality. Certainly they did not keep it long after they asserted it in 1909.

The Canadian and Australian Senates, patterned, as they have been very largely, upon the Senate of the United States, present many points for comparison with it.[2] In recent years both have asserted their constitutional rights and proved their power to act as coördinate rather than subordinate bodies with the lower houses in their respective countries. The methods of adjusting differences between the Houses in these two British nations have been described and explained and their actual workings illustrated in several more or less recent studies.[3] These are so readily accessible that it does not seem to the point to give a detailed summary of them in this place.

The French bicameral system resembles in some ways the English system. There is a cabinet government which exerts itself to keep harmony between the two Chambers. In addition there is a constitutional restriction which taken by itself would subordinate the French Senate to the Cham-

[1] See Luce, *Legislative Procedure,* p. 409.

[2] For very recent developments in these two bodies, see G. B. Roberts, *Functions of the English Second Chamber* (London, 1926), and R. A. MacKay, *The Unreformed Senate of Canada* (Oxford, 1926).

[3] Temperley, *op. cit.,* Marriott, *op. cit.,* Roberts, *op. cit.,* MacKay, *op. cit.* The constitution of the Australian Commonwealth makes provision in case of serious disagreement for simultaneous dissolution of the Senate and the House of Representatives. If, after the ensuing election, there is still disagreement, further provision is made for a joint session of the two Houses at which session a majority vote settles the issue. The Canadian constitution provides that in case of deadlock the Governor-General may add a very limited number of members to the Senate.

ber of Deputies as other European upper chambers are subordinated to lower chambers and as the House of Lords is now subordinated to the House of Commons. This is the provision in the Constitutional Law of February 24, 1875, which requires that money bills shall first be introduced in and passed by the Chamber of Deputies.[1] And there is no additional clause, as there is in the United States Constitution, that the Senate may propose or concur with amendments as on other bills.

There is, however, another constitutional provision which gives much strength to the Senate. This is the provision in the Constitutional Law of February 25, 1875, which permits the dissolution of the Chamber of Deputies only with the consent of the Senate. This obviously strengthens the Senate at the expense of the Ministry. Both the strengthening of the Senate and the weakening of the Ministry have brought the French bicameral system to resemble more nearly the Congressional system than any other system in Europe or among the British nations. The French Senate has proved itself strong enough to claim the right to amend money bills, a right which is not specifically granted it in the Constitutional law. Under certain circumstances it has maintained this right. There is no question as to the right of the French Senate to refuse to grant appropriations voted by the Chamber of Deputies.[2]

[1] Article 8.—The Senate shall have, concurrently with the Chamber of Deputies, the power to initiate and pass laws. Money bills, however, shall first be introduced in and passed by the Chamber of Deputies. See *Journal Officiel de la République Française*, Feb. 24, 1875, p. 1414.

[2] In 1896 the Senate refused to vote appropriations for the expedition to Madagascar until the Bourgeois Ministry then in power should retire and be replaced by one that had the confidence of both Chambers. Although the Ministry had the confidence of the Chamber of Deputies and the Chamber had voted the appropriations, the Ministry resigned. *Journal officiel*, April 22, 1896, (*Sénat*), pp. 382-384, cited in Esmein, A., *Elements de droit constitutionnel Français et comparé* (Paris, 1914), p. 831.

What, then, are the means used in France to adjust differences between the two Chambers and to prevent deadlocks? First, dissolution of the Chamber of Deputies is legally possible. In case of conflict between the two Chambers, if the Ministry happened to be on the side of the Senate, the Ministry and the Senate might agree to a dissolution of the Chamber of Deputies and thus attempt a solution of the difficulty. Only once, however, has the Chamber of Deputies been dissolved. This was done in 1877 by Marshal McMahon when President of the Republic. His experience was so unfortunate that dissolution has never again been tried.[1]

Dissolution, then, is not used in France. Neither are new members created to bring the Senate to agreement. That would be impossible under the French Constitution. Joint sessions of the Senate and Chamber of Deputies are held only when a President is to be elected or the Constitution amended. These special functions would make joint meetings an unsatisfactory method of adjusting differences between the two Chambers. The referendum is not provided for by the Constitution and has not been considered in France as a method of reaching agreement between the Chambers. All of the methods mentioned are as inapplicable to the French system as they are to the Congressional system.

The method of adjusting differences between the Chambers prescribed by the rules of both the Senate and the Chamber of Deputies is that of Mixed Commissions, which in many ways resemble the Congressional conference committees. But although the rules provide for mixed commissions or conferences these have rarely been held in France. Conferences are not necessary because communication between the two Chambers is carried on easily through

[1] Esmein, *op. cit.*, p. 749.

the agency of the Government. The Ministers pass freely from one Chamber to the other, they make speeches in both Chambers to defend Government measures, and they consult with the Commissions of both Chambers on all matters of legislation. When conferences have been held the Ministers have been active in bringing about agreement. Since, therefore, it is so largely through the efforts of the Government that disputes between the Chambers are settled, the conference is not important in the French bicameral system. Nevertheless, a comparison between the French rules and practice regarding conferences and the American conference committee system serves to bring out clearly the distinctive features of the latter. This comparison will therefore be drawn.

Article 129 of the rules of the French Senate provides that when a bill passed by the Senate has been amended by the Deputies, the Senate may, on the motion of one of its members, decide that a commission be appointed to meet in conference with a commission from the Chamber of Deputies for the purpose of agreeing on a common text. The Senate rules also prescribe that this commission or conference committee shall consist of eleven members to be elected by "scrutin de liste."[1] Article 144 of the rules of the Chamber of Deputies declares that when a bill passed by the Chamber has been amended by the Senate, the Chamber may decide on a motion of one of its members that a commission shall be charged to meet with a commission of the Senate for the purpose of agreeing on a common text. The Chamber is privileged to decide whether this charge shall be given to the commission which reported the bill or to a new commission to be elected in the bureaux.[2]

[1] For the rules of both Chambers relating to conferences, see Pierre, *Traité de droit politique, électoral, et parlementaire*, 5th edition (Paris, 1919), section 676, p. 817, *et seq. Journal officiel*, June 11, 1876.

[2] On February 4, 1915, the rules of the Chamber of Deputies were

The rules of the two Chambers further provide that in case of agreement, each commission shall report to the Chamber which it represented at the conference and that body, be it the Senate or the Chamber of Deputies, shall deliberate upon the new text. There is nothing in the rules to prevent either Chamber from amending the report.[1] If the Senate rejects the report or if the two commissions do not reach an agreement, the Senate rules provide that the matter cannot be taken up again in less than two months' time, except on the initiative of the Government. If the Chamber of Deputies rejects the report or if the conference cannot reach an agreement, the rules of the Chamber do not permit it to take up the matter again before two months have passed except on the initiative of the Government.[2]

In the Senate on June 11, 1876, M. Batbie, a member of the Commission on Rules which reported the general Senate rules in that year, made some explanation of the action of the commission in including rules providing for conferences. M. Clement had made a rather long speech against conferences, saying that they would be more likely to increase causes of dispute between the Chambers, and also that they were likely either to lessen the control the Chambers had

modified so that that assembly is permitted full liberty, if it does not avail itself of the old commission, to name the new one by one of three procedures: groups, bureaus or scrutin de liste. Pierre, *op. cit.*, Supplement, sec. 676, p. 995. The old commission means the commission which had the bill in charge before it was considered in the Chamber of Deputies. The French commissions resemble to a certain extent the committees of the United States Senate and House of Representatives. For a complete exposition of their later development, see Lindsay Rogers, "Parliamentary Commissions in France," in *Political Science Quarterly*, vol. xxxviii, nos. 3 and 4, September and December, 1923.

[1] See Article 130 of the Senate Rules and Article 144 of the Rules of the Chamber of Deputies.

[2] These provisions are to be found in Article 130 of the Senate Rules and Article 146 of the Rules of the Chamber of Deputies.

one over the other or to do away with their complete independence of one another. They had been condemned in England, he said, after a decisive experience with them. Why should France not profit by England's experience? M. Batbie replied that the commission had persisted, against such attacks as this, in presenting the rules providing for conferences, first, because they hoped that the conference would be one means, though not the only means, by which agreement could be reached between the Chambers; second, because all the members of the commission were convinced that the conference would in no way endanger the independence of either Assembly. If the innovation did not serve the purpose intended it would fall into disuse.[1]

Although the machinery for conferences provided by these rules has been seldom put into operation, nevertheless the results seem to have been satisfactory on the few occasions when it has been used. The first occasion was in December, 1879, when the differences between the two Chambers in regard to a Government project concerning the military service were submitted to a mixed commission or conference.[2] Another conference was held in 1889 on the differences in regard to a recruiting law.[3] Both of these conferences were successful in bringing about agreement between the two Chambers. In the first case the time taken was a little more than three months—from December 13, 1879, when the bureaux of the Chamber of Deputies elected the commission to represent that body until March 20, 1880, when the report of the conference was adopted by the Chamber of Deputies, the Senate having agreed to it the day

[1] *Journal officiel,* June 11, 1876.

[2] *Annales du Sénat et de la Chambre des Députés,* December 11, 1879; Pierre, *op. cit.,* sec. 677, p. 821.

[3] *Journal officiel,* June 7, 1889 (*Sénat*), p. 683; Pierre, *op. cit.,* sec. 677, p. 822.

before. The time taken in 1889 was only a month and two days—from June 7, 1889, when the Chamber of Deputies decided to choose the commission which had reported the bill, to represent it at the conference, till July 9, 1889, when after the conference the Chamber of Deputies decided to adopt the text approved by the Senate. In this case it was not necessary to make any report to the Senate.[1]

For twenty years after 1889 the machinery devised for mixed commissions or conferences between the Chambers remained unused. It was set in motion for the third time in 1909 and the experience at this time showed that it is effective in hastening the solution of legislative conflicts which may arise between the two Chambers. The bill in question on this occasion, a Government project introduced by Viviani, was one regulating the use of white lead in the work of painting the exterior as well as the interior of buildings. This project dated from October 30, 1902; it had once been returned by the Senate on July 2, 1907. When it came back a second time on June 2, 1909, M. Jules-Louis Breton who presented it, also presented a resolution that the Chamber of Deputies in conformity with Article 144 of its rules, appoint its Commission of Public Hygiene to meet with a commission of the Senate for the purpose of agreeing to a common text for the project on the employment of white lead in the work of painting the exterior of buildings. The Minister of Labor, René Viviani, joined in the request and the resolution was adopted.[2] The Senate agreed and elected a commission of eleven members.[3] The mixed commission held three meetings. Their report consisted of an explanation of the motives which had ruled in

[1] *Journal officiel*, July 9, 1889 (*Chambre des Députés*), p. 1895; Pierre, op. cit., sec. 677, pp. 820-822.

[2] *Journal officiel*, July 2, 1907 (*Chambre*), pp. 1615, 1616, and June 2, 1909, p. 1277; see Pierre, *op. cit.*, Supplement, sec. 677, p. 998.

[3] *Journal officiel*, June 3, 1909 (*Sénat*), pp. 349, 350.

their action in making certain changes in the bill. This report was adopted by both Chambers. Just one month had elapsed between the time when the Chamber of Deputies adopted the resolution proposing the conference — June 2, 1909, and July 2, 1909—when the report was presented in the Chamber of Deputies. On July 10, this report was presented in the Senate [1] by the Minister of Labor. The Senate ordered it printed and distributed.

These three instances scattered over a period of thirty years are the only ones in which the French have used conferences as a means of settling differences between the Chambers. Yet in each of these cases the result of the conference was a successful adjustment of the different views of the two Chambers. The conference was not entirely forgotten during the years in which it was not used. When in 1884 the Government urged the revision of the Constitution in order that the right of the Senate in questions of finance might be stated more definitely, the Senate Commission which reported upon the matter said among other things that it preferred to trust to developing further rules of procedure, perhaps putting into practice conferences between the Chambers.[2] Then in 1915 the general amendment of the rules of the Chamber of Deputies included one rule facilitating the election of commissions to meet in conference with commissions of the Senate.[3] In 1917 an attempt was made to hold a conference over the differences between the Chambers in regard to a bill which had been introduced by the Government, but according to the rules the request could not be made at the stage when the attempt was inaugurated.[4] The strictness of this rule may account

[1] *Journal officiel*, July 10, 1909 (*Sénat*), p. 675.

[2] Pierre, *op. cit.*, sec. 531, p. 600.

[3] See *supra*, p. 233, n.

[4] Pierre, *op. cit.*, Supplement, sec. 676, p. 994. For further details on this point, see *infra*, p. 240.

in a measure for the fact that the conference has not been used more often.

There is enough material, however, in the discussions over the three conferences that were held and the one which was attempted, to afford a comparison between the French system and the American system. In the main it is a comparison between a system established by rule, with almost no practice to supplement the rule, and a system grown out of practice, in which rules have in general only stated the usage found through actual working to be effective.

In some ways the French mixed commission is exactly like the Congressional conference committee. In both, the vote is taken by group and not by head, that is, the decision is reached by a majority of each of the two committees. If these majorities agree, then the conference has reached agreement. Thus it really does not matter if the membership of one of the committees far outnumbers that of the other. If one committee had nine members and the other only three, the decision of the nine, even though it was unanimous, could not overrule that of the two members of the other committee of three.[1] This is one point of likeness between the two systems.

Then the report which the French mixed commission presents to the two Chambers is very much like the Congressional conference report. Identical reports are made in both Chambers, and with the report is presented an explanatory statement which is also the same in both Chambers.[2] The report is printed, signed and distributed among the members of both Chambers.[3] In all these ways the French and American systems are alike. In many others they are different.

[1] See Pierre, *op. cit.*, Supplement, sec. 677, p. 999.

[2] Pierre, *op. cit.*, Supplement, sec. 677, p. 999.

[3] Pierre, *op. cit.*, sec. 677, pp. 822, 825, 999.

The French mixed commissions are much larger in membership than the American conference committees. Their size depends somewhat upon the manner in which they are chosen. This is not the same in both Chambers. In the Senate the rules prescribe that a commission of eleven members be elected by "scrutin de liste."[1] The Chamber of Deputies, on the other hand, has a choice of retaining the old commission which had the bill in charge or of choosing a new one by any one of three methods.[2] Thus the number chosen by the Chamber is very likely to be different from that required by the Senate rules. This has caused some dissatisfaction in the Senate. For instance, for the conference of 1889 the Chamber of Deputies decided to appoint the old commission which had had the bill in charge, the Commission of the Army, which numbered thirty-three members. Contrary to its rules the Senate decided to appoint its old commission instead of electing a new one of eleven members. But even the old Senate commission numbered only eighteen. One Senator moved that members be elected to raise the number of the Senate commission to thirty-three. This proposition was defeated.[3] At the time of the conference of 1909 the question came up again in the Senate. The reporter[4] of the commission which had had in charge the bill for the regulation of white lead in painting asked that the old commission be appointed. This was admittedly going against the Senate rule and caused considerable debate, but resulted in maintaining the strict interpre-

[1] See Article 129 of the Senate Rules.

[2] See *supra*, p. 233, n.

[3] *Journal officiel*, June 1889 (*Senat*), pp. 683-689. Pierre, *op. cit.*, sec. 677, p. 820.

[4] The French commission has a *Président* who presides over its meetings and a *Rapporteur* who is its spokesman in the Senate or Chamber of Deputies.

tation of the rule.[1] A new commission of eleven members was elected by "scrutin de liste." On both of these occasions it was made very clear that the number of members of a commission had nothing whatever to do with its voting power in a conference, for all voting in that body was done by group and not by head.[2] In both Chambers in France, the members of the conference are elected by the Chamber. This is quite different from the practice in Congress, where in both the Senate and the House of Representatives, except on rare occasions, the presiding officer appoints the conferees.

In the United States Congress a conference may be asked for at any stage of legislation.[3] In France the rule is very definite as to when the request for a mixed commission may be made. Certain principles are observed without exception. First, each Chamber must have voted on the bill as a whole at least once. And if one Chamber has voted on it twice then the other must also have voted on it twice. It is only when a Chamber sees returned to its bureau a bill on which it has already voted as many times as the other Chamber that the question of a conference can be raised.[4]

The conference might have been used more often in France if this rule of procedure had not been so strictly observed. The question came up in June, 1917, as to whether a mixed commission could be requested at a time when the

[1] *Journal officiel*, June 3, 1909 (*Sénat*), pp. 349, 350; Pierre, *op. cit.*, sec. 677, p. 999.

[2] In the discussion which took place in 1909, the President of the Senate, Antonin Dubost, said that this principle was clearly established in the Senate on June 10, 1876, by M. Batbie, speaking in the name of the commission on rules. See *Annales du Sénat*, June 10, 1876, pp. 241, 242; Pierre, *op. cit.*, Supplement, sec. 677, p. 999.

[3] See *supra*, p. 147.

[4] *Annales de la Chambre des Députés*, June 14, 1876, p. 20; Pierre, *op. cit.*, sec. 677, p. 818.

bill was not in the same state of procedure before the two assemblies. The matter was not debated in the Chamber but was taken up between the President of the Chamber and the Chamber Commissions of the Budget and of Civil Legislation. The bill was one offered by the Government. The Senate had amended the text voted by the Chamber of Deputies and had sent it back to the Chamber. There it had then been referred to the Commission of Civil Legislation which prepared and distributed a report. If it had not been sent to a Commission, it would have been in the same stage of procedure before the Chamber of Deputies as it was before the Senate, and it would have been proper to take measures to bring about a conference to hasten agreement between the Chambers. The question asked the President of the Senate by several members of the two Commissions concerned was whether it would not be proper before there was any public debate on the matter to ask a conference. The President replied in the negative; the rule was explicit and it provided that the time at which a request for a conference might be made was when a bill amended by one of the Chambers was returned to the other and when the latter had not yet commenced examination of it.[1]

So one conference was prevented from taking place. The arguments for the stand taken varied. On the one hand it was said that if recourse could be had to conference at any stage in the debate, the value of the conference would be weakened. On the other hand it was argued that if conferences could be had too easily the risk would be run of multiplying causes of conflict. Furthermore, the mixed commissions must be absolutely independent in order to have the chance to arrive at any agreement, and this independence, this equality of those elected by the two Chambers could not exist unless the bill was at the same point of procedure in

[1] Pierre, *op. cit.*, Supplement, sec. 676, p. 994.

the two assemblies.[1] So the arguments run. The actual working of the conference in the United States seems to disprove them in part but not wholly. There can be no doubt but that causes of conflict have been multiplied in the United States for the sake of getting bills to the conference stage.[2]

As has been said before, the report of the mixed commission is very much like that of the American conference committee. The manner in which it is treated is, however, very different from that in which the American conference report is treated. The rules of both the Senate and the Chamber of Deputies provide that the new text be deliberated upon. Neither Chamber is deprived of the right of examination, discussion or amendment. The common text must be reported first to the Chamber in possession of the bill, and this body decides freely whether it wishes to adopt, modify, or reject the report. If it adopts the report and if this text conforms to that of the other Chamber,[3] all is finished. If the text presented the other Chamber is different or if amendments are offered by the Chamber which considers it first, it is proper to return the bill and report first before the other Chamber. This was the declaration made by the President of the Senate on June 7, 1889.[4] It is not based upon experience, for these complications did not arise in the actual workings of the conferences held. The reports of mixed commissions have never been amended.

[1] Pierre, *op. cit.*, Supplement, sec. 676, p. 994; also, sec. 677, pp. 999, 1000.

[2] See *supra*, chapters v, vi and vii.

[3] The rules do not require that the reports in the two Chambers be identical, although the three conferences held all presented identical reports. Pierre, *op. cit.*, sec. 677, pp. 821, 822; Supplement, sec. 677, p. 999.

[4] *Journal officiel*, June 7, 1889 (*Sénat*), p. 683; Pierre, *op. cit.*, sec. 677, p. 821.

In France the Government may take an active part in bringing about a conference and also in securing a prompt consideration of a conference report. It is true that the Administration in the United States has at times exerted some influence upon legislation at the conference stage [1] but relatively speaking that influence has not been great. A cabinet system in which the relations between the executive and legislative branches are so much closer than they are in our Congressional system offers much greater opportunity for the executive to influence conferences. In several different ways the Ministers have been active in the conferences held in France. For instance, in 1889, it was the President of the Council who explained to the Senate and convinced that body that it did not matter if the commission it sent to conference was smaller in number than that sent by the Chamber of Deputies, since the vote was taken by groups and not by head.[2] When this first conference made its report it finished it with a statement in the name of the Commission of the Senate, the Commission of the Chamber of Deputies, and the Government, requesting that the report be voted upon without amendment in order that it need not be returned again before the commissions where the interminable discussion would be renewed.[3] When in 1909 M. Breton, reporter of the Commission of Public Hygiene of the Chamber of Deputies, moved that a conference be requested with the Senate on the bill to regulate the use of white lead, he said that the Government wished to join with him in urging the conference.[4]

[1] See *supra*, pp. 173-177.

[2] *Journal officiel*, June 7, 1889, p. 683 (*Sénat*).

[3] *Annales de la Chambre des Députés*, March 20, 1880, p. 241, *et seq.* Pierre, *op. cit.*, sec. 677, p. 821.

[4] *Journal officiel*, June 2, 1909. p. 1277 (*Chambre*); Pierre, *op. cit.*, Supplement, sec. 677, p. 998.

The question of the introduction of new matter into a report of a mixed commission has naturally not been of any importance. If the report is open to discussion and amendment it does not matter particularly if it does contain some provisions outside those committed to the mixed commission. If they could be struck off by amendment in either Assembly, they could easily be disposed of, and furthermore there would not be so much reason for putting them in as there is for introducing new matter into a Congressional conference report.

A large number of the differences between the Chambers in France occur over matters of finance. This is true also in our Congress and in all legislative systems. In France these differences have not been settled in conference, but a principle called the system of "the last word" has been established whereby the Chamber of Deputies maintains a right to the final decision in money matters.

The constitutional law of February 24, 1875, as has been said before, gives to the Senate, concurrently with the Chamber of Deputies, the power to initiate and to pass laws. It also adds that money bills shall first be introduced in and passed by the Chamber of Deputies.[1] There has been a great deal of discussion in regard to the interpretation of this clause. Gambetta was the leader of a group who held that the Senate had in regard to appropriations only the right of remonstrance.[2] That is, it could in effect request the Chamber to reconsider an appropriation which it had voted down, but he would not concede that the Senate had any right to amend a money project by increasing the amount of the appropriation voted by the Chamber. It could, of course, amend by decreasing the amount. That, he said,

[1] *Journal officiel,* Feb. 24, 1875, p. 1414. See Pierre, *op. cit.*, sec. 529, p. 594.

[2] *Annales de la C. D.* December 28, 1876, p. 370, *et seq.*

was the real purpose of the Senate. In the Senate, on the other hand, the right to amend by increasing appropriations has been warmly defended.[1]

The bills over which conflicts have taken place have generally been introduced by the Government. When the Chamber of Deputies has amended a Government bill by reducing the amount of the credits, or appropriations, established therein, the Government has sometimes brought before the Senate the items struck off by the Chamber and the Senate has restored them. This has caused much controversy but it has usually been held that the Senate had no right on its own initiative to restore credits denied by the Chamber of Deputies. Needless to say, the French Senate cannot amend a money bill from the Chamber by substituting one of its own.[2] This, however, is a long-established right of the United States Senate.[3]

From the time the first budget was considered in France under the present Constitution the question has often been raised as to how the right of the Senate to a part in making the laws was to be reconciled with the reservation to the advantage of the Chamber of Deputies in the matter of financial laws. Has the Chamber of Deputies simply a right of priority? Can the Senate restore credits refused by the Chamber? If it can and if the Chamber persists in its first attitude, how will the disagreement end? Not by the rejection of the budget law, for that is not to be considered. Not by the promulgation of the budget law according to the decision of the Chamber of Deputies without the consent of the Senate, for the Constitution provides that every law must be voted by both Chambers before it can be promulgated.[4]

[1] *Journal officiel*, March 20, 1885, p. 353 (*Sénat*); Pierre, *op. cit.*, sec. 530, p. 598.

[2] Pierre, *op. cit.*, sec. 529, p. 594.

[3] See *supra*, Chapter vi.

[4] Pierre, *op. cit.*, sec. 529, p. 595.

In law the question has never been settled; it has in fact, however, by the system of "the last word." When the first budget bill under the constitutional law of 1875 was sent from the Chamber of Deputies to the Senate, the Commission of the Senate proposed certain restorations of credits which had been asked for by the Government and reduced or suppressed by the Chamber of Deputies. They had been asked for for the purpose of maintaining existing laws or for continuing established public services. The Senate Commission held that the Senate had an incontestable right to restore them.[1] It seemed to be the general opinion in the Senate that should the Senate vote these credits and should the Deputies again refuse them, the Senate would not attempt again to vote them into the budget.

The Senate voted the increases and they called forth debate in the Chamber of Deputies on December 28, 1876, when the budget bill was returned there. Gambetta who was then President of the Commission of the Budget held that the Senate had no right whatever to write credits into the budget. His argument was that when the Government had presented the Chamber of Deputies with a financial bill, and when the Chamber had suppressed certain items of it, there was nothing left of these items in the budget sent to the Senate. The Constitution forbade the initiation of money projects in the Senate.

Jules Simon, the President of the Council, replied to Gambetta's argument that although the Constitution said that financial bills should be presented and voted upon in the first place in the Chamber of Deputies, nevertheless they must be presented and voted upon in the second place in the Senate. This does not give the Senate the right to dispose of the money of the taxpayer, for no appropriations restored

[1] *Annales du Sénat*, December 19, 1876, pp. 90, 91. Pierre, *op. cit.*, sec. 529, p. 595.

by it are made law until they are agreed to by the Chamber of Deputies.

In this case the Chamber of Deputies rejected the position of Gambetta. By a large majority it accepted some of the increases voted by the Senate. The Senate agreed to the reductions voted by the Deputies and the conflict was ended.[1]

Practically the same thing took place without contest when the budget of 1878 was voted upon. The Senate voted to restore some credits which the Government had asked for and the Chamber of Deputies had refused. In both cases the increase made by the Senate and agreed to by the Deputies was very small compared with the increase first asked by the Senate.[2]

In the budget of 1879, the Senate restored an appropriation of 327,400 francs for the service of the Church, which had been suppressed by the Chamber of Deputies. It also voted increases for the Departments of Justice and the Interior. The Chamber, however, rejected the three amendments of the Senate. At the same time it agreed to some reductions in appropriations which the Senate made.[3] In the budget of 1881 the Senate created a new expenditure of 30,000 francs for the Beaux-Arts. The Chamber of Deputies rejected this small item and agreed to all reductions made by the Senate. The Senate agreed without question.[4]

These precedents all illustrate — in fact, they serve to establish—the system of "the last word." As Gambetta said, the Senate has the right of remonstrance only, in matters of finance. Once the remonstrances are presented to

[1] *Annales de la Chambre des Députés*, December 28, 1876, pp. 370-389; Pierre, *op. cit.*, sec. 529, p. 597.

[2] Pierre, *op. cit.*, sec. 529, p. 597.

[3] Pierre, *op. cit.*, sec. 529, p. 597.

[4] Pierre, *op. cit.*, sec. 529, p. 598.

the Chamber of Deputies, the right of the Senate expires. The Chamber of Deputies stands in the place of last resort. It accepts or rejects and its vote is without appeal.

When the Government under Jules Ferry proposed the Constitutional Revision of 1884, it suggested the submission of Article 8 of the Constitutional Law of February 24, 1875. The Government stated its reasons for this suggestion somewhat as follows: Ever since 1876 the two Chambers had disagreed over the meaning of Article 8, the Senate believing itself to have the right to amend the budget in any way and the Chamber believing that it could only reduce, not restore an appropriation. In practice this had caused conflict many times but had always been resolved by mutual concessions, thanks to a spirit of patriotic conciliation. The Chamber of Deputies would often restore in a new deliberation the appropriations which had first been suppressed and which the Senate had attempted to restore. The Senate had never obstinately held out for an appropriation twice refused by the Chamber. Nevertheless, the Government thought it unwise to leave so important a question as that of the budget without some well-defined manner of solution in case of serious conflict between the two Chambers. A clear statement in law of the practice already established, assigning to the Chamber of Deputies the last word after two deliberations, would not, it was urged, take away from the power of the Senate. It was precisely to regulate such difficulties as this one that Constitutions had their existence. The Senate had even now the last word as to rejection of new expenses or imposts introduced by the Chamber of Deputies. It was by that means that it exerted the control the value of which was so much appreciated.[1]

The Chamber of Deputies was quite willing to submit Article 8 for revision but the Senate declined. The Senate

[1] *Journal officiel*, May 24, 1884 (*Chambre*), p. 1121; Pierre, *op. cit.*, sec. 531, p. 599.

Commission which reported upon the matter said that there was no way of knowing just what was the intention of the Chamber of Deputies in the matter of revision. They preferred to trust to developing further rules of procedure, perhaps the use of conferences between the two Chambers.[1]

As a consequence of the question not being submitted for revision in 1884, the whole matter came up again for discussion when, in the budget of 1885, the Senate increased appropriations by two and a half million francs. The Chamber Commission with many reservations, including the aforementioned arguments of Gambetta, proposed to concur in 60,000 francs of the appropriations restored by the Senate. After discussion at some length, in which considerable opposition was shown to this acceptance, the Chamber voted by a good majority to follow the recommendations of its commission and concur in the Senate increase of 60,000 francs.[2]

The long debate on this question in the Chamber of Deputies provoked a reply from the Senate on March 20, 1885. The Senate Commission maintained that the system of the last word was well enough in some instances, but when it came to the suppression of an appropriation which virtually abrogated existing law, then neither Chamber should renounce its right to insistence.[3]

[1] Pierre, *op. cit.*, sec. 531, p. 600. The Senate is of necessity cautious about submitting to constitutional revision matters of vital importance to it, for this revision is made by the National Assembly which is constituted of the Chamber of Deputies and the Senate sitting together and voting by head and not by body. The members of the Senate are so far outnumbered by the Deputies that the National Assembly might very well vote away the rights of the Senate.

[2] Pierre, *op. cit.*, sec. 532, pp. 601-603. The report of Jules Roche who represented the Commission of the Budget includes a summary of the precedents on this subject. *Journal officiel*, March 7, 1885 (*Chambre*), p. 432, *et seq.*

[3] *Journal officiel*, March 20, 1885 (*Sénat*), p. 361, *et seq.* Pierre, *op. cit.*, sec. 532, p. 603.

The Chamber of Deputies has been jealous of its constitutional prerogatives in regard to money bills. It has often held to the letter of the law and refused to accept an appropriation coming from the initiative of the Senate, no matter how necessary or how small, and then introduced on its own account or accepted on the initiative of the Government an identical proposition, passed it and sent it to the Senate. And it has been the practice of the Senate to accept such propositions. In 1908 the subject was examined anew as to whether the Senate could restore appropriations asked by the Government and refused by the Chamber of Deputies, and it was decided in the negative.[1]

The real agency of conciliation in budget matters is the Government. In nearly all cases of conflict between the two chambers, the Government will be found to make every effort to bring them into harmony. In the case of the budget of 1889, the Government asked the Senate to vote an appropriation which had been asked and refused by the Chamber of Deputies. The President of the Council, M. Floquet, defined the constitutional question as being whether or not the Government could take the initiative, not whether or not the Senate could. He thought the Senate could not. The Senate after some argument to the effect that it could vote the appropriation on its own initiative, did vote it. The Chamber of Deputies likewise agreed to the appropriation, but on the understanding that it had been offered by Government initiative.[2]

In 1904 there was another case similar to that of 1889. A reduction in an appropriation which was part of the budget was made in the Chamber of Deputies when the Minister of the Interior was absent and could not defend it.

[1] Pierre, *op. cit.*, Supplement, sec. 532, p. 683.

[2] *Journal officiel*, Dec. 24, 1888 (*Sénat*), pp. 1723, 1724; *Journal officiel*, Dec. 28, 1888 (*Chambre*), p. 3179, *et seq.*; Pierre, *op. cit.*, sec. 532, pp. 604, 605.

The Government asked for its restoration in the Senate and then persuaded the Chamber of Deputies to accept it as having come from the initiative of the Government. The case of M. Floquet in 1889 was used as a precedent.[1]

It has also been held on one occasion in recent times that, when the Senate had received a bill for tax reform from the Chamber, the President of the Council could send a letter to the President of the Senate, containing suggestions complementary to or rectifying the fiscal mechanism established by the Chamber of Deputies. Such a letter was sent July 8, 1913, from Charles Dumont, Minister of Finance, to the President of the Senate transmitting a message to the President of the Senate Commission of taxes, and this letter was printed and distributed in the Senate.[2] The Government is thus the real means as well as the official means by which communication is made between the two Chambers. The Ministers pass freely from one Chamber to the other while they are in session and they consult with the Commissions of both Chambers on all matters of legislation.

The Senate may without infringing upon constitutional principles vote a resolution inviting the Government to institute a fiscal reform before the Chamber of Deputies. But this resolution must not contain a plan worked out in detail as to amount and purpose, for this would seem to be the same as if the Senate had orginated a money bill.[3]

The Chamber of Deputies may also, at the proper time,[4]

[1] *Journal officiel,* December 28, 1903 (*Chambre*), pp. 3389-3391; Pierre, *op. cit.,* Supplement, sec. 532, p. 681.

[2] Pierre, *op. cit.,* Supplement, sec. 529, p. 674.

[3] On May 25, 1899, the Senate requested the Government to institute a reform before the Chamber of Deputies in regard to a tax law. *Journal officiel,* May 25, 1899 (*Sénat*), pp. 592-608; Pierre, *op. cit.,* Supplement, sec. 534, p. 690.

[4] When the report of a proposition has already been placed before the bureau of the Senate by the Senate Commission, the Government can

invite the Government to support or hasten the passage of a bill before the Senate. This request may be made whether or not the bill was introduced by the Government or by a member of the Chamber of Deputies. In the Chamber on November 3, 1903, the President, Leon Bourgeois, made it known that in his personal opinion he considered it as not at all in harmony with the principles of the Constitution to invite the Government by a resolution to defend before the Senate a bill of the Chamber, not introduced by the Government. But he added that the precedents did not permit him to oppose it.[1] Many have protested against the inconsistency of asking the Government to defend before the Senate propositions that originated in the Chamber as Chamber propositions and not as Government bills, but it cannot be denied that the precedents permit the practice.[2]

It also follows from the same precedents that the President of the Council may agree to answer before one Chamber a question concerning the examination of a bill by the other Chamber. Such a question was asked of Emile

intervene quite regularly to ask its consideration; but when the Senate Commission has not yet ended its examination, it is going too far to entreat the action of the Government. For instance, on November 28, 1903, M. Charles Bos offered a resolution inviting the Minister of Public Instruction to ask the Senate to discuss as promptly as possible a proposition passed by the Chamber and not yet reported from the Senate Commission. M. Chaumie, Minister of Public Instruction, said he had no authority to make a commission of the Senate hasten its labors. When the report was submitted to the Senate, the Government could then ask that it be considered but it was absolutely impossible for him to exert pressure upon the members of the Commission. He said he could express to the President of the Senate the desire of the Government; the President of the Senate could then use as he saw fit the influence which he had with the Commission. M. Charles Bos, who had offered the resolution, declared this promise of the Minister quite sufficient and withdrew his resolution. *Journal officiel,* Nov. 28, 1903 (*Chambre*), p. 2980, *et seq.;* Pierre, *op. cit.,* Supplement, sec. 680, p. 1015.

[1] *Journal officiel,* Nov. 3, 1903 (*Chambre*), p. 2465.

[2] Pierre, *op. cit.,* Supplement, sec. 680, p. 1014.

Combes, President of the Council, on June 26, 1902, in the Chamber of Deputies. The President of the Council said there was a certain measure to which he could go in intervention. It was not the practice of the Government to meddle with the procedure of an Assembly. But this is what he could and would do. He would bring it up individually with his colleagues of the Senate who formed a part of the Commission, urging that haste be made in reporting the bill, and he would also approach the President of the Senate with the same purpose.[1]

This statement of M. Combes, President of the Council, describes the methods that the Government continually uses not only to hasten legislation but to harmonize differences between the Chambers. Through the mediation of the Government any misunderstandings between the Chambers are thus cleared up and ways of compromise are found without the agency of the conference committee. In the few cases where conferences have been held, the Ministers have taken an active part both in bringing about the conference and in securing a prompt consideration of the conference report. The fact that the Government is much weaker than the Cabinet in England does not seem to make it less effective as an agency for bringing about understanding and adjustment between the two Chambers. It is probably for this reason that the conference committee has not been more used in France.[2]

[1] *Journel officiel,* June 26, 1902 (*Chambre*), pp. 1988, 1989; Pierre, *op. cit.,* Supplement, sec. 680, pp. 1015-16.

[2] A study has been made of the disagreements between the Chambers in England and France by Edmond Weinstein in a University of Paris thesis of 1910, entitled *Les conflits des chambres en Angleterre et en France.* Weinstein divides his study into three subdivisions: legislative, budgetary and political conflicts. He considers some phases of the subject which have not been considered in the present study, especially questions involving political differences between the Chamber of Deputies and the Senate and the relation of such disagreements to the Government.

CHAPTER X

Summary and Conclusion

The Congressional Conference Committee System is a piece of legislative machinery which has evolved to meet certain imperative needs. A bicameral system in which neither House could be really subordinated to the other; a rigid separation of powers enjoined by the Constitution, which prevented the development of a cabinet system to direct legislation; and an enormous increase in the demand for governmental activity — these taken together produced the situation peculiar to the American Congress. Given the background of the English Constitution and long experience in working with modifications of that constitution, the American parliamentary mind has met the exigencies of the American legislative situation with the Conference Committee System.

The original form of the American conference committee was an inheritance from the English Constitution. That form evolved in England from the necessity of reaching agreement between two Houses that were in some important respects antagonistic to one another. In the years preceding the Civil War such a state of antagonism developed between the American Senate and House of Representatives. It was in those years that the Congressional Conference Committee System took form.

In all its essentials this system was in existence by 1852. By that year the customs of presenting identical reports from the committees of conference in both Houses, of grant-

ing high privilege to these conference reports, of voting upon the conference report as a whole and permitting no amendment of it, of keeping secret the discussions carried on in the meetings of the conference committee, had become established in American parliamentary practice. No rule had been adopted to define and safeguard the practices enumerated, which, taken together, constitute the conference committee system. Few definite rulings of presiding officers had been made relating to these practices, but, nevertheless, they had been established. Furthermore, ways were beginning to be devised to send bills to conference at an earlier stage in their progress than the regular procedure would permit. The conference was recognized as a means of shortening lengthy procedure as well as a means of harmonizing disagreements between the Houses. It was also recognized as a means by which necessary legislation could be forced through a Senate and House of Representatives whose majorities were often, on certain issues, fundamentally opposed to one another.[1]

It has been said several times in the course of this study that the conference committee system is a product of evolution. Just when the different parts of the system were first used is not absolutely certain and it is also impossible to give credit to those who first suggested the practices which later formed the parts of the system. In 1796 a motion to amend a conference report was ruled out of order in the Senate. In 1826 the Speaker of the House decided that the report of a committee of conference could not be amended. In 1837 the conference report on the Fortification bill was presented out of order in the House by unanimous consent. In a number of cases in 1850, by one means or another, conference reports were given right of way over other legis-

[1] For all of this early development of the Congressional Conference Committee System, see *supra*, chapter iv.

lation. In 1848 conference reports were adopted as a whole under the operation of the previous question. In 1850 a bill was sent to conference from the House without first being referred to a committee of the House. In 1851 bills were sent to conference from the House with Senate amendments which had never been read in the House. All of these were among the first recorded instances of practices which later became important factors in the conference committee system. Yet the very manner in which several of these were recorded indicates that they were not the first of their kind. Most of these practices seem to have originated independently and at intervals of years. About 1850 the possibility of using them in conjunction and thereby making the employment of the conference committee something much more effective than it had been before seems to have been realized. Perhaps there was a master mind to which this realization first came. If so, there are no records to show whose mind it was.

It is possible from 1852 until the present, however, to give credit to certain presiding officers for defining important practices connected with the conference committee. For instance, in 1852 Speaker Linn Boyd of Kentucky made two rulings that served as precedents for years to come. The first of these was that a conference report is an entirety and must be agreed to or disagreed to as a whole. On the same day that Speaker Boyd made this ruling he made another decision that was taken as a general ruling, that the presentation of a conference report was in order at any time. In this year also the President of the Senate, William R. King of Alabama, ruled that it was not in order for a Senator to move to accept a portion of a report of a conference committee—that the report was indivisible.

By 1850 a beginning had been made in the matter of controlling the conference committee. There was a principle thoroughly understood, if not always followed, that confer-

ence reports were to be printed and allowed to lie over a day before being considered in either of the Houses. Furthermore, from 1846 on, these reports were generally signed by the managers and printed in the *Journals* of the Senate and the House. In these early days, practically no other form of control was exerted over the managers. The point of order against a conference report containing new matter not committed to the conference committee had been offered only once or twice and this method of combating the evils of the conference committee had not yet been developed and was not understood.

Since 1852 there have been developments which have meant increase in the power of the conference committee and, especially in recent years, increase in control over it by the Senate and the House. During the thirty years that followed the first systematic coördination of the practices essential to the conference committee system,[1] there were several definite rulings of presiding officers and one definite rule of the House of Representatives which made the high privilege of the conference report more secure. Furthermore, a new practice was introduced during the sixties and seventies by which one House amended a bill from the other House by substituting an entirely different bill for it and then both Houses sent the two bills to a conference committee which was permitted in turn to write a new bill. This gave very large powers to the conference committee. Also during the sixties and seventies the process of sending bills to conference at an early stage was considerably facilitated. In the matter of control over the managers, advance was made in the establishment of the practice in the House of ruling out a conference report on a point of order that it contained new matter not committed to the conference.

In establishing the practice in the House of giving great

[1] *Cf. supra,* chapter v.

latitude to a conference committee to which is committed a bill from one House with an amendment from the other in the nature of a substitute, Schuyler Colfax of Indiana seems to have had a larger part than anyone else. When in 1862 the conference committee on the Washington and Georgetown Railway bill was given a Senate bill and House substitute to harmonize, and reported a new bill, it was largely through the efforts of Schuyler Colfax and Thaddeus Stevens that the report was adopted in the House. This was a very early instance of the practice. In 1865 Colfax, then Speaker, ruled in regard to another similar report from a conference committee, that since the Senate had struck out the bill of the House and inserted another one, the committee of conference had a right to report a substitute in place of either House or Senate bill. He said, in fact, that the committee might report any bill that was germane to the bills before them.

Speaker Blaine in the seventies did much to define the privileges of conference reports and the powers of conference committees. In 1870 he made a definite statement to the effect that thereafter conference reports would be considered privileged above all other matters that might come before the House. In 1871 he ruled that a conference report could not be referred to the Committee of the Whole for consideration but was to be agreed to or disagreed to by the House itself. In 1872, and again in 1876, he ruled that a conference report could not be laid on the table. In 1871 he ruled a conference report out on a point of order that it contained new matter not germane to the bill or to the amendment to it. On the ground just stated, Senator Edmunds succeeded in having a conference report ruled out of order in the Senate in 1876. In spite of this precedent, which he took a good deal of trouble to establish, it did not become the practice in the Senate to rule a conference report

out on the point of order that it contained new matter not committed to the conference until the Curtis rule of 1918 was adopted.

In 1883 a really new invention was made which greatly shortened and facilitated the process of getting bills to the conference stage. This was the special resolution from the House Committee on Rules by which a House bill, returned from the Senate with amendments, could be reached out of order and sent directly to conference without any consideration in the House or any of its committees. This was the invention of Thomas B. Reed, which he produced as a solution for the difficult problem of the Tariff bill of 1883.[1] It has been used from time to time ever since 1883, one of the latest occasions being that of sending the Muscle Shoals bill to conference in 1925. The reporting of such a special resolution from the Committee on Rules thus became one of the practices which made up the conference committee system.

Since 1883 there have been some rather important rulings to support the right of the Committee on Rules to report special resolutions to send bills directly to conference at early stages and to block dilatory tactics on the part of the minority in opposition to such resolutions.[2] Aside from these rulings, development in the Conference Committee System since 1883 has taken the form of increased control over the managers by the House and the Senate. No particular gains were made in this line, however, until the twentieth century and not any conspicuous ones until very recent years. In 1902, in both Senate and House there was much discussion of the powers of the conference committee,[3]

[1] For a detailed account of this, see *supra,* chapter vi.

[2] See *supra,* chapter vii.

[3] For twentieth century developments in the control of managers, see *supra,* chapter viii.

and the House adopted a rule requiring that the conference report with an explanatory statement be printed in the *Record* and allowed to lie over a day for consideration before being acted upon in the House, except, of course, on the last six days of the session.

The Senate rule of 1918 made it possible to challenge a conference report on the point of order that it contained new matter not committed to the conference committee. Rulings in several cases coming under the new rule especially in the case of the Muscle Shoals bill of 1925 have established the interpretation that it makes no difference whether new matter in a conference report is germane to the bill and the amendments. If a report contains new matter, be it germane or not, it can be ruled out in the Senate on a point of order. Furthermore, under this rule the Senate does not permit the wide powers granted by the House to a conference committee to which has been committed a bill from one House with an amendment from the other in the nature of a substitute. Even under these circumstances new matter in a conference report, be it germane or not, can be ruled out in the Senate on a point of order.

In the House a rule of 1920 forbids House managers to agree in conference to a large class of Senate amendments to appropriation bills without a separate vote on each amendment by the House. That this rule has been observed can be proved by any study of the legislative history of the appropriation bills which have been passed since that time. This rule is probably the most effective means yet devised of controlling the evils of the conference committee system.

The conference committee system is not the work of any one party. As the Republicans have been in power more often than the Democrats they have used it more than the Democrats have, and more of the important rulings have been made by Republican presiding officers than by Demo-

cratic ones. But the Republican party was not yet in existence as a national party in 1850, the time when the possibilities of the conference committee system seem first to have been recognized and when its use began to be general. The important rulings of 1852 were made by Democratic presiding officers in both House and Senate. These officers were Linn Boyd of Kentucky, Speaker of the House, and William R. King of Alabama, President *pro tempore* of the Senate.

The Republicans made use of the system when they came into power with the Civil War. They continued to make use of it, and through much experience in working with it in their periods of ascendancy they gradually made it more effective. On the other hand, each time the Democrats have come into power they have used the conference committee system. Reference has been made to the special resolution reported from the Committee on Rules by Thomas B. Reed in 1883 by which a bill with Senate amendments on the Speaker's table could be reached out of order and sent directly to conference. After criticizing this action most bitterly when it was taken under the Republican régime in 1883, the Democrats repeated it many times when they were in the majority. Moreover, under the Democrats this practice was strengthened by the addition of a new provision to the Rules of the House in 1892 and by a favorable ruling of Speaker Charles F. Crisp, of Georgia, in 1895. The Tariff bill of 1894 under a Democratic régime was sent to conference by such a special resolution. This tariff conference affords another example of the adaptation of the conference committee system for party purposes under Democratic rule. The Democratic members of this tariff conference of 1894, in spite of protests, met without the Republican conferees during all but the final formal adjustments, and thus began a practice followed in nearly all tariff conferences thereafter.

Perhaps the most cold-blooded use of legal power under the Conference Committee System is to be found under a Republican régime in 1909 when the House Committee on Rules reported a special resolution to the effect that none of the provisions of the conference report on the Payne-Aldrich Tariff bill should be subject to a point of order. There was admittedly new matter in the report. It will be observed, however, that care was taken to make the action legal. Some of the most flagrant violations, in recent times, of the general principle followed in both Houses that new matter must not be introduced into conference reports, have occurred while the Democrats were in power. Most conspicuous of these was the clause exempting members of Congress from the excess profits tax in the War Revenue Act of 1917. One of the differences between the two parties in their use of the conference committee is that the Republicans are more experienced than the Democrats. This is clearly shown in the two examples just given. The Republicans in 1909 took no chances on transgressing the parliamentary law but adapted to the need in this particular case a safe method that had been used in other connections—that of the special resolution from the Committee on Rules. The Democrats in 1917 seem to have thought that they could use the conference committee as they had so many times charged the Republicans with using it. They included the new matter surreptitiously. They did not evade the law, they broke it.

In 1887 Schuyler Colfax, who had served through three Congresses as Speaker of the House, said that as to most important legislation, conference committees ultimately decide what shall or shall not be enacted.[1] During the sixty-sixth, sixty-seventh and sixty-eighth Congresses, out of the ninety-three appropriation bills, only nine did not go through the conference stage, and practically all other important

[1] O. J. Hollister, *Life of Schuyler Colfax*, p. 211.

public bills were agreed to by conference committees before they became laws.[1] There can be no question but that the conference committee system has been and is now a vitally important part of the legislative process at Washington.

Throughout all its history of seventy-five years or more this Congressional conference committee system has been subject from time to time to most severe criticism. In 1860 Senator Lyman Trumbull of Illinois, inveighing against the Senate practices of sending bills to conference without reading the amendments of the House, and of voting upon conference reports without knowing what they contained, said that conference committee legislation was the worst kind of legislation. This characterization is exactly the one given it by Senator Norris in 1925. In 1884 Senator Sherman, who had been active as a member of conference committees for more than twenty years, expressed his serious doubt as to whether they should be allowed to wield such power as the Tariff conference of 1883 had wielded. Senator La Follette on more than one occasion talked most earnestly against the evils of the system. Professor Taussig has said in discussing a tariff conference, that in the conference committee, "irresponsibility in legislation reaches its acme." Many other such comments have been made, some of which have been noted in other parts of this study.[2] Any consideration of them raises the question as to whether they are justified by the facts. If conference committee legislation is bad, and if almost all important legislation passes through the conference committee, is the situation one to cause despair of intelligent representative government?

[1] This and much more statistical information may be obtained from the Calendars and History of Legislation of the House of Representatives for the Sixty-sixth Congress, Washington, 1921, the Sixty-seventh Congress, Washington, 1923, and the Sixty-eighth Congress, Washington, 1925.

[2] See chapters iv, v, vi, vii, for comments to which reference has been made.

This question will bear considerable analysis. In the first place, what is conference committee legislation? It is legislation into which the conference committee has introduced changes not authorized by either House and which is accepted uncritically or unknowingly by the Houses. Such legislation may not be bad in itself but it undoubtedly is bad for the two Houses thus docilely to surrender their powers of legislation to irresponsible committees of conference. In this sense, conference committee legislation is bad.

It is also true that nearly all important legislation passes through the conference committee stage. That does not mean, however, that nearly all important legislation is conference committee legislation. The fact is that under the House and Senate rules of the present time a fair degree of control is maintained over the managers. From time to time for many years conference reports have been ruled out in the House on the point of order that they contained new matter not committed to the conference. Through these same years from time to time the Senate has voted down such conference reports for the same reason although the point of order was not used against them in the Senate practice until 1918. Under the rules of the two Houses, since the additions of the Senate rule of 1918 and the House rule of 1920, control of the managers has been increased so that there is much less conference committee legislation than there was at one time.

Certainly there is now more control over the conference committee by the two Houses than there ever has been in the past. Although the House rule of 1920 affects only conference committees on appropriation bills, yet in reaching them it has probably reached the greatest evils in the conference committee system. It has been the habit of the Senate for many years to load down the appropriation bills with legislative amendments. John Sherman, when he was

in the House of Representatives in 1860, complained bitterly of the way the appropriation bills which were worked out by the House Committee of Ways and Means were amended in the Senate. Senator Trumbull about the same time made the charge that most legislation was on appropriation bills. He wished the country to know it. In 1902 Senator Hoar described the manner in which the Senate amended appropriation bills out of all recognition and then requested conferences on them.[1]

Appropriation bills have been particularly well suited to legislative amendment by the Senate under the conference committee system, for in most cases they must be passed in order that necessary activities of the Government may continue. As a rule it would take a courageous House to defeat one and only very rarely have they been defeated. The conference reports on them have often been brought in late in the session when there was not time to examine them or send them back to conference. They have been adopted and thus a very large amount of legislation has been forced through Congress by the conference committee system.

The Senate still amends appropriation bills, but amendments of a legislative nature, unless they retrench expenditure, cannot be agreed to by the House conferees without special authorization by the House, for that is the force of the rule of 1920[2] which is a part of the general budget reform of that year. Thus, in importance, the control of conference reports on appropriation bills looms large. Even from the point of view of numbers of conference reports, it is not insignificant. Of the seventy-five bills and resolutions passed through conference in the sixty-sixth Congress, thirty were appropriation bills; of ninety-five in the sixty-seventh Congress, thirty-two were appropriation bills; and of fifty-nine in the sixty-eighth, twenty-two were.

[1] *Cf.* chapter viii.

[2] *Cf. supra*, pp. 183-185.

Thus the House rule provides for effective control over a large proportion of the most important of the conference committees. The new Senate rule of 1918 as it has been interpreted in important rulings makes it possible to challenge a conference report which contains new matter not committed to the conference committee, whether or not this new matter is germane to the bill, and whether or not the conference committee was given two separate bills to harmonize. Thus the Senate rules and practice give much opportunity to contest all conference reports in which the conference committee has attempted to legislate.

It would seem, then, that conference committee legislation is bad but that there is not enough of it that eludes the rules and practice of the two Houses to cause despair. Furthermore, the keenest critics of conference committee legislation have not wished to abolish the conference committee system. Senator Trumbull became converted to it. Senator Sherman objected only to giving it power which the two Houses should themselves exercise. Senator La Follette made effective use of it on several occasions.

The truth is that the conference committee system is a necessary part of the Congressional government system. It must, however, be kept under the control of the two Houses. The managers must not be allowed to include in their report any matter not committed to them by either House nor must they be allowed to eliminate items which have been agreed upon by both Houses. On the other hand, the peculiar composition of a conference committee makes it particularly fitted to offer constructive suggestions in regard to a bill that may have been altered several times in the course of its progress through the two Houses. The members of the conference committee are also members of the committees of the two Houses which, working separately, have given the bill serious consideration at earlier stages in its progress.

In the conference committee certain members of these committees are met together where they can talk over the various attitudes of their separate committees and their separate Houses. Under such circumstances a most valuable idea may be advanced which will necessitate the introduction of new matter.

As a solution to the problem here involved, the suggestion was made in the Senate as far back as 1862 that any such recommendation from the conference committee should be made separately from the conference report in order that the Senate might be permitted to take a separate vote on the proposed new matter. This suggestion was made by Senators Collamer and Fessenden in the debate held on the Bounty Land Bill.[1] The suggestion was not followed at the time, but in 1866 on a bill to protect the revenue the conferees did precisely what had been proposed in 1862. They made a change in the text of the bill which was not authorized by either the Senate or the House, and they made the change the subject of a separate paragraph at the end of and outside their signed report.[2] When the report was considered in the Senate separate action was taken on the change of text, the President *pro tempore,* Lafayette S. Foster of Connecticut, holding that it could be agreed to only by unanimous consent. This unanimous consent was required because of the irregular method of introducing the new matter. There was no objection in this case; the Senate agreed to the change in the text of the bill, and a separate notification of this action was sent to the House when the adoption of the conference report was announced.

The difficulty of following this plan generally would be

[1] *Globe,* 37th Cong., 2nd Sess., June 16, 1862, pp. 2723-2724, 2746-2748, 2832.

[2] *Globe,* 39th Cong., 1st Sess., p. 4225, June 27, 1866; Hinds, vol. v, sec. 6433, p. 747.

that of securing unanimous consent. In the House, however, by the rule of 1920 relating to appropriation bills, the managers are permitted to report forbidden amendments outside their regular conference report and these amendments may, according to the rule, be adopted by the House by a majority vote. The House managers do not in presenting the Senate amendments to which they are forbidden to agree in conference, present with them any recommendations,[1] but explain them informally during the House discussion of them.

Such a rule in either House, that would apply to other conference reports and would go a step further and permit recommendations from the committee, might be of value in two ways. First, such a rule would allow the House or Senate to profit by the constructive suggestions of an informed conference committee. Second, it would remove temptation to laxness in regard to new matter in conference reports which under the present circumstances is almost justified. It probably would conduce to a more strict observance of the rule.

This is one suggestion for improvement. La Follette made another in 1919 when he was fighting the conference report on the Oil and Coal Land Leasing Bill. His aim was to do away with congestion at the end of the session and ill-considered adoption of conference reports during the last crowded hours. He predicted that at some time in the future, in the interest of good legislation, a rule would be enacted that in the short session all bills originating in either House must be sent to the other House not later than the tenth day of January, and after that no legislation would be received; that committees receiving these measures from the other House, after a reasonable time to be named in the rule—a month, five weeks, or six weeks—must report them

[1] *Record*, 66th Cong., 3rd Sess., Jan. 22, 1921, p. 1889.

out. It is doubtful, however, whether such a rule as this is likely to be passed. The end of the session jam is still such a factor in the working of the conference committee system that it is doubtful whether the two Houses will take deliberate measures to make it impossible.

Another suggestion has been offered at different times which it might be well to carry out. When the rule in regard to printing conference reports was under consideration in the House,[1] it was suggested that the requirement be made that conference reports be printed in bill form, that is, with all the changes made in conference printed in italics so that they could be recognized readily. Mr. McRae said that otherwise it took a man half a day to find out what the conference committee had done. Representative Richardson of Tennessee, who had made the report concerning printing from the Committee on Rules, contended that it was the accompanying statement in any event which gave real information as to what had been done with the bill in conference. McRae's suggestion was not followed and the printing of conference reports in bill form has never been required except by special resolution. It is true in a sense that the accompanying statement does explain the effect of the conference report. However, it did not explain the inclusions in the case of the War Revenue Bill of 1917. In 1925 the conference report on the Muscle Shoals bill in the Senate was printed in bill form by a special resolution introduced by Senator Norris.[2]

No constructive suggestion has been offered which would make the managers responsible for their actions in the sense that ministers under a cabinet system are responsible. There apparently is no way to do it. In any event such responsibility is incompatible with the control which both Houses are

[1] *Record,* 57th Cong., 1st Sess., May 22, 1902, p. 5836.

[2] *Cf.* chapter viii, p. 172.

seeking to extend over their managers. There are two ways in which governmental agencies can be kept to a steady exercise of their functions. One of these is by effective control by a higher power . The other is by being given responsibility, which implies that the men involved stand or fall according to the manner in which they perform their duties. The English Cabinet is a governmental agency suited to such responsibility; the American conference committee, by its very nature, is not so fitted. This fact has been realized by those who have sought to do away with the evils of the system and they have devised some effective methods of control by the House and Senate. Doubtless these methods can still be improved.

This brings to a close an attempt at analysis of a piece of governmental machinery which has its strength and its weakness but which is, and has been, necessary under legislative conditions in the United States Congress of our time and of many years past. Without the background of English parliamentary law, the Congressional conference committee system could never have been what it is. But for the rigid Constitution of the United States it would probably not have developed into the powerful agency it is. If it had not been for the vast increase in demands on governmental activity and consequent increase in legislation during the last seventy-five years, it might not have grown so strong. But these factors did combine and the conference committee system was one of the results of their combination. There is every reason to believe that it will last as long as our Congressional government endures.

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VITA

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